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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

**PETITION TO AMEND THE
RULES OF THE SUPREME
COURT OF ARIZONA TO
ADOPT RULE 24--JURY
SELECTION**

Supreme Court No. R-21-_____

**PETITION TO AMEND THE
RULES OF THE SUPREME
COURT OF ARIZONA TO ADOPT
PROPOSED RULE 24--JURY
SELECTION**

I. INTRODUCTION

For fairness, it is important that the law hear and see all people equally. For legitimacy, it is likewise important that the law be seen by the people to hear and see all people equally. This Court, in its current Strategic Agenda, wisely recognizes the importance of the law's legitimacy, writing, “it is particularly important we identify and address concerns or issues that may affect the public's trust and confidence in our justice system.” 2019-2024: Justice for the Future, Planning for Excellence, at 19 (2019). In 2020, millions of Americans wrote, spoke, and poured into the streets over an acute concern that affects the public's trust and confidence in our justice system – a concern that 245 years after the founding, America has still not realized a system of law and justice that respects people of all races equally.

This Court can help assure equality in Arizona's courts by making real the promise of equality in jury service, which is central to American civic life. “[W]ith the exception of voting, for most citizens the honor and privilege of jury duty is their most significant opportunity to participate in the democratic process.” *Powers v. Ohio*, 499 U.S. 400, 407 (1991); accord *Flowers v. Mississippi*, 139 S. Ct. 2228, 2234 (2019).

As America struggles toward racial equality, courts and states have recognized that *Batson v. Kentucky*, 476 U.S. 79 (1986), has failed to bring equality to jury service. Peremptory challenges are still often an excuse for bias, with group status – whether race, gender, religion, or otherwise – used to predict how jurors will decide. This breeds unfair strikes, promoting cynicism about the law and delegitimizing the important work of our courts.

This Petition aims to change that, asking this Court to adopt a new Supreme Court Rule 24 on “Jury Selection.” Proposed Rule 24 would prevent the use of group status as a basis to strike jurors. The Rule would give effect to prohibitions on strikes grounded in race, gender, or religion, as required by our federal and state constitutions

and this Court's Canon of Judicial Conduct 2.3(C). By enacting Rule 24, this Court would send a powerful message of equality to all Arizonans – while affirming this Court's tradition of leadership in the law and procedural innovation.

II. PROCEDURAL HISTORY

Recognizing the need for *Batson* reform, Petitioner Kevin Heade filed Petition R-20-0009 in January 2020, which proposed new Supreme Court Rule 24 on “Jury Selection” to eliminate the unfair exclusion of potential jurors based on race or ethnicity. That Petition proposed to supplement the existing *Batson* framework for evaluating peremptory challenges with a new procedure and standards modeled after Washington's General Rule 37 (“GR 37”).

While Petition R-20-0009 was pending, members of the State Bar's Civil and Criminal Practice and Procedure Committees formed a Working Group to study proposed Rule 24, and this Court granted Mr. Heade's motion to withdraw that petition to enable this Working Group to complete its study and analysis. *See* Order Granting Mot. to Withdraw Pet. (5/19/20).¹

The Working Group met thirteen times from May 2019 to January 2021 (and its subcommittees met many more times), and studied Washington's GR 37, recently adopted *Batson* reform legislation in California, other states' *Batson* reforms, case law, empirical data, and academic literature documenting *Batson's* shortcomings. The Working Group ultimately developed this proposed rule, which is similar to, but seeks to refine and improve upon, GR 37. *See* App'x A (proposed Rule 24).

¹ *See* App'x B (Working Group participants). Before Petition R-20-0009 was withdrawn, 9 out of 12 commenters agreed that the existing *Batson* framework had failed to adequately address racial and ethnic bias in jury selection in Arizona. Only 1 comment was opposed to the Petition, and the remaining 2 comments (notably, from the State Bar of Arizona and the Maricopa County Attorney's Office) urged further study of the problem.

III. “BATSON IS BROKEN”

A. *Batson* Has Failed to Eliminate Bias in Jury Selection.

In 1986, the U.S. Supreme Court decided *Batson v. Kentucky*, holding that peremptory challenges could not be used to intentionally strike prospective jurors based on their race. Nearly 35 years later, *Batson* is “widely regarded as a failure” by courts and commentators alike. See, e.g., Abel, J., *Batson's Appellate Appeal and Trial Tribulations*, 118 Colum. L. Rev. 713, 713 (Apr. 2018) (“*Batson* is broken”); see *State v. Saintcalle*, 309 P.3d 326, 334 (Wash. 2013) (“*Batson* has done very little to make juries more diverse or prevent prosecutors from exercising race-based challenges”); App'x C (bibliography).

The Supreme Court's recent decision in *Flowers v. Mississippi* shows the limitations of *Batson* in practice, and likewise the urgency of making real its promise of truly reducing discrimination. There, the U.S. Supreme Court reversed a Black defendant's conviction based on the prosecution's use of peremptory strikes to eliminate 41 of 42 prospective Black jurors over the course of the defendant's six trials; its decision to strike five out of six Black jurors at the defendant's sixth trial; its “dramatically disparate” questioning of Black versus White jurors; and its strike of “at least one” Black juror who was “similarly situated to white prospective jurors who were not struck.” Confronting these particularly extreme facts, Justice Kavanaugh wrote: “We cannot just look away.” *Flowers v. Mississippi*, 139 S. Ct. at 2235, 2250.

In facing the failure of *Batson*, which yields remedies in an extraordinarily low share of cases, Arizona likewise “cannot just look away.” While the “extraordinary” facts of *Flowers* eventually caused the reversal of the defendant's conviction because the prosecution's overt racism could not be ignored, *id.* at 2250, the vast majority of *Batson* objections fail. This is true in Arizona, as it is across the country.

Review of 160 Arizona appellate decisions since 1987 shows that Arizona's appellate courts found consequential *Batson* error in only 4.4% of cases and remanded for further *Batson* findings by the trial court in an additional 2.5% of cases. In the

remaining 93.1% of cases, Arizona's Supreme Court or the Court of Appeals found that the record supported the trial court's determination that the basis for the challenges were race (or gender) neutral. *See* App'x D (compilation of Arizona appellate *Batson* decisions); App'x E (graphs of Arizona case analysis); *see also* *State v. Gentry*, 247 Ariz. 381 (App. 2019) (prosecutor's strike of only remaining African-American juror did not violate *Batson*), *rev. denied* Jan. 7, 2020; *State v. Ybarra*, No. 2 CA-CR 2017-0286, 2019 WL 2233299 (Mem. May 22, 2019) (prosecutor's peremptory strike of only African-American juror did not violate *Batson*), *rev. denied* Mar. 3, 2020.

These statistics are consistent with stark data from other states. *See, e.g.,* Pollitt, D., & Warren, B., *Thirty Years of Disappointment: North Carolina's Remarkable Appellate Batson Record*, 94 N.C. L. Rev. 1957, 1957 (Sept. 2016) (“In the 114 cases decided on the merits by North Carolina appellate courts, the courts have never found a substantive *Batson* violation where a prosecutor has articulated a reason for the peremptory challenge of a minority juror”); Semel et al., Berkeley Law Death Penalty Clinic, *Whitewashing the Jury Box: How California Perpetuates the Discriminatory Exclusion of Black and Latinx Jurors* at vii-viii (June 2020) (“in...30 years, the California Supreme Court has reviewed 142 cases involving *Batson* claims and found a *Batson* violation only three times (2.1%)”; California courts of appeal “found error in just 18 out of 683 decisions” from 2006 through 2018) (cited as “Berkeley Study”).

The failure of *Batson* is borne out by hard data showing that Black jurors are disproportionately stricken from jury service as compared to White jurors. A recent North Carolina study of federal felony trials found that prosecutors removed twice as many Black jurors as White jurors (20% of Black jurors compared to 10% of White jurors). Wright, R.F., Chavis, K., & Parks, G.S., *The Jury Sunshine Project: Jury Selection Data as a Political Issue*, 2018 U. Ill. L. Rev. 1407 (2018) (cited as Wright et al.); *see also* Grasso, M. & O'Brien, B., *A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-Batson North Carolina Capital Jury Trials*, 97 Iowa L. Rev. 1531 (2012)

(study of trials of death row defendants over 20-year period showed that Black venire members were struck at 2.5 times the rate of non-Black venire members). And a recent California study of nearly 700 California appellate court decisions addressing *Batson* objections found that 71.6% of strikes were used to remove Black jurors and 28.4% were used to remove Latinx jurors. White jurors were stricken in only 0.5% of these cases. *See* Berkeley Study, at 12-14. Arizona's appellate record reflects a similar trend: over 60% of unsuccessful *Batson* challenges addressed in Arizona appellate opinions or memorandum decisions involved the removal of Black or Hispanic jurors. *See* Appendices D and E.²

Batson's empirically-confirmed failing flows inexorably from its three-part test: (i) the party challenging a peremptory strike must first show a prima facie case of intentional discrimination; (ii) the striking party must then provide a “race-neutral” basis for the strike; and (iii) the judge must then determine if the challenging party has established “purposeful discrimination.” *See Miller-El v. Cockrell*, 537 U.S. 322, 328-29 (2003) (internal citations omitted); *accord State v. Hardy*, 230 Ariz. 281 (2012). As critics have observed, the second and third steps of *Batson* present burdens that are insuperable in all but the most egregious cases.

One gross deficiency is that *Batson's* second step invites spurious explanations for strikes, so long as they are not racial on their face. It “does not demand an explanation

² This percentage is probably higher, but some decisions do not identify the stricken juror's race and simply reference their minority status, *see* Appendices D and E (“Unspecified Minority”). System-wide data on the rate at which minority jurors are stricken, as compared to non-minority jurors, is not readily available. State court clerks “do not traditionally compile data on the rate at which parties or judges exclude minority jurors over long periods of time.” Wright et al., *supra*, at 1409. The Jury Sunshine Project compiled its data by traveling to hundreds of courthouses and reviewing thousands of individual case files and 30,000 juror strikes. *Id.* Even if such a massive effort could be undertaken for Arizona, there is neither reason to believe, nor evidence to suggest, that the conclusions would be any different from those reflected in the Jury Sunshine Project and similar studies.

that is persuasive, or even plausible.” *Purkett v. Elem*, 514 U.S. 765, 767-68 (1995). Even “implausible or fantastic justifications” will satisfy the second step, inviting fictive and unreasonable explanations that pay the barest lip service to neutrality. *Id.* at 768. *See* Abel, *supra*, at 719 (“the trouble with this framework is at step two: The prosecutor can make up any justification she wants for the strike, and those justifications can be impossible to disprove”); Frasher, P., *Fulfilling Batson and Its Progeny: A Proposed Amendment to Rule 24 of the Federal Rules of Criminal Procedure to Attain a More Race- and Gender-Neutral Jury Selection Process*, 80 Iowa L. Rev. 1327, 1340 (July 1995) (“*Batson* arguably will afford little or no protection against discrimination by parties if the Supreme Court mandates merely a superficial inquiry into the racial and gender neutrality of a justification presented by the striking party”).

Batson's third requirement of “purposeful discrimination” is likewise virtually impossible to demonstrate. It requires the trial court to make the fraught and difficult finding that the lawyer defending the strike both lied to the court (with a pretextual explanation) and was racist. *See, e.g.,* Abel, *supra*, at 720-21 (“intent requirement” requires judges to “say the prosecutor was racist”); *see also Flowers*, 139 S. Ct. at 2265 (trial court must subjectively assess prosecution's “credibility” to sustain a *Batson* challenge).

B. Arizona Should Join Other States in Reformulating *Batson*.

Washington state played a key role in the current movement to reform *Batson*. In *State v. Saintcalte*, 309 P.3d 326 (Wash. 2013), the Washington Court acknowledged “the growing body of evidence show[ing] that *Batson* has done very little to make juries more diverse or prevent prosecutors from exercising race-based challenges.” *Id.* at 334. After receiving recommendations from a Jury Selection Work Group, Washington's Supreme Court adopted GR 37 in 2018. *See* Sloan, A., Note, “*What to Do About Batson?*”: Using a Court Rule to Address Implicit Bias in Jury Selection, 108 Cal. L. Rev. 233 (Feb. 2020) (discussing Washington reforms).

Washington's GR 37 altered the *Batson* framework to address recognized shortcomings that had prevented it from achieving its promise of racial equality in jury selection. The most significant change was to modify *Batson's* required showing of “purposeful discrimination” with a neutral observer standard for assessing whether race played a role, cast in GR 37 as an “objective observer” test. As Judge McMurdie noted in his dissent in *State v. Porter*, Washington's reformulation of the *Batson* test “protect[s] the integrity of the jury selection process from both purposeful and unconscious discrimination.” *See Porter*, 248 Ariz. 392, 407 (App. 2020), *rev. granted*, Nov. 3, 2020.

Following Washington's lead, in January 2020 California's Supreme Court established a Task Force to study the issue of *Batson* reform. And while this effort was underway, California passed ground-breaking legislation establishing a procedure for *Batson* challenges modeled substantially after Washington's GR 37.³

Other states are responding to the call for *Batson* reforms. In *State v. Holmes*, 221 A.3d 407 (2019), the Connecticut Supreme Court upheld a prosecutor's challenge of a minority juror “as consistent with the federal constitutional case law,” but referred the “systemic concerns” about *Batson* to a Jury Selection Task Force “to consider measures intended to promote the selection of diverse jury panels in our state's courthouses.” *Id.* at 412. And in the wake of George Floyd's death, supreme courts or the chief justices of twenty-four states and the District of Columbia issued statements emphasizing the pivotal role of courts in eliminating both conscious and unconscious bias in the legal system. *See* Harawa, D., *The False Promise of Pena-Rodriguez*, 109 Cal. L. Rev. ____ (2021) (collecting citations to Court and Chief Justice statements); *see also* Massachusetts Supreme Judicial Court, *Letter from the Seven Justices of the Supreme Judicial Court to Members of the Judiciary and the Bar*, mass.gov (June 3, 2020), <https://www.mass.gov/news/letter->

³ See Assem. Bill 3070, 2019-2020 Reg. Sess., ch. 318, 2020 Cal. Stat., <https://legiscan.com/CA/text/AB3070/2019>.

[from-the-seven-justices-of-the-supreme-judicial-court-to-members-of-the-judiciary-and](#) (“As judges, we must look afresh at what we are doing, or failing to do, to root out any conscious and unconscious bias in our courtrooms; to ensure that the justice provided to African-Americans is the same that is provided to white Americans”).

As the Arizona Court of Appeals urged in *Porter*, this Court “could (and should) improve the *Batson* framework to promote the Supreme Court's purpose.” *Porter*, 248 Ariz. at 399. The proposed Rule does just that, building on the nationwide call for reforms and presenting a workable framework that will end improper discrimination in jury selection in Arizona once and for all.

C. The Proposed Rule Should Extend to Other Group Statuses.

While race is undoubtedly special and distinct in American history – and deserves special priority in efforts to make jury selection nondiscriminatory – no person should be denied the opportunity to serve on an Arizona jury *because of* their membership in a group already protected from discrimination by the Arizona and United States Constitutions or federal antidiscrimination laws. In fact, those groups – which include those identified by sex, gender, religion, national origin, disability, age, and sexual orientation – are already protected against discrimination in the courtroom under this Court's Canon 2.3(C) of Judicial Conduct. The proposed Rule's scope is thus consistent with existing Arizona law.

1. The Federal and Arizona Constitutions Already Bar the Use of Peremptory Strikes Based on Race, Gender, or Religion.

It has long been unconstitutional in Arizona courts to exclude someone from a jury because of their race or gender. *Batson v. Kentucky*, 476 U.S. 79 (1986) (race); *J.E.B. v. Alabama*, 511 U.S. 127, 129 (1994) (gender); *State v. Dewakuku*, 208 Ariz. 211 (App. 2004). Studies confirm that the gender composition of juries is used by prosecution and defense alike as a proxy for decision making. *See, e.g.*, Flanagan, F., *Race, Gender, and Juries: Evidence from North Carolina*, 61 J.L. & Econ. 189 (May 2018) (race and gender

composition of randomly selected jury pool has significant effect on probability of conviction); Eisenberg, A., *Removal of Women and African Americans in Jury Selection in South Carolina Capital Cases, 1997-2012*, 9 Ne. U. L. Rev. 299 (Summer 2017) (finding both defense and prosecution exercised strikes on basis of gender, suggesting the use of gender as proxy for decisional bias).

Likewise of great importance, the Declaration of Rights in our state's Constitution mandates that no one can be barred from a jury in Arizona because of their “opinion on matters of religion.” Ariz. Const. art. II, § 12; *see State v. Finch*, 202 Ariz. 410 (2002) (addressing *Batson* challenge based on religion).

2. This Court's Canon of Judicial Conduct 2.3(C) Already Bars the Use of Peremptory Strikes Based on Other Statuses.

This Court's Canon of Judicial Conduct 2.3(C) already bars the use of peremptory strikes to bar persons from serving on Arizona juries on account of a variety of statuses. That Rule requires Arizona courts to prevent:

lawyers in proceedings before the court...[from] manifesting *bias* or prejudice...based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

Id. (emphasis added). Jury selection occurs “in proceedings before the court.” *See id.* Prospective jurors are “others” who fall within the protections of Rule 2.3(C)'s plain text. And striking them from a jury because of their attributes is a form of “bias.” *See, e.g., Powers*, 499 U.S. at 402 (referring to continuing bias in the jury selection process).

Arizona law confirms that point. *State v. Urrea*, 244 Ariz. 443, 445 (2018) (explaining that *Batson* vindicates the right to a jury without “racial or ethnic bias”); *Porter*, 248 Ariz. at 396 (using race-based challenges taints jury selection with racial “bias.”). The word “bias” has a well-understood public meaning fully consistent with this logic. *See bias*, *Merriam-Webster.com*, <https://www.merriam->

webster.com/dictionary/bias (“a personal and sometimes unreasoned judgment: prejudice; [or] an instance of such prejudice.”). This Court should enact the proposed rule to bar the use of peremptory strikes in a manner exhibiting bias against persons “based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, [and] sexual orientation...” That protection is merely coextensive with Canon 2.3(C).

Moreover, the proposed Rule is narrower than Canon 2.3(C), and thus conservative in its enumeration of included classes. It only urges the inclusion of protections against peremptory strikes for groups that are both included within Canon 2.3(C) **and** which are also protected against discrimination in the federal or Arizona constitutions, or under longstanding antidiscrimination laws, including Title VII of the Civil Rights Act (1964), the Age Discrimination in Employment Act (1967), and the Americans With Disabilities Act (1990).

3. There Are Sound Empirical and Legal Reasons to Extend the Proposed Rule to Other Protected Groups.

Sexual orientation. As the Eleventh Circuit noted in *Berthiaume v. Smith*, 875 F.3d 1354 (11th Cir. 2017), “[g]iven the long history of cultural disapprobation and prior legal condemnation of same-sex relationships, the risk that jurors might harbor latent prejudices on the basis of sexual orientation is not trivial.” *Id.* at 1359. Studies show that jurors are far more likely to admit to an inability to be fair to gay defendants, than they are to admit racial bias. McNamarah, C., *Sexuality on Trial: Expanding Peña-Rodriguez to Combat Juror Queerphobia*, 17 Dukeminier Awards J. Sexual Orientation & Gender Identity L. 393, 400 (2018) (summarizing studies: in one, 17% of jurors said they could not be fair to a gay defendant; in another, 12%; in another, “[t]hree-and-a-half times more people said that they could not be fair and impartial if a party to a case was gay than said that they could not be fair if a party was female, black, or Latino.”). Recognizing the problem, six states now bar discrimination against the seating of

LGBT jurors. In a type of *Batson* reform, three states – Colorado, Minnesota, and Oregon – bar the use of peremptory challenges on the basis of sexual orientation. COLO. REV. STAT. § 13-71-104(3)(a); MINN. STAT. § 593.32; OR. REV. STAT. § 10.030. Similarly, Wisconsin, Illinois, and California straightforwardly bar exclusion from jury service on the basis of sexual orientation. WIS. STAT. § 756.001(3); 705 ILL. COMP. STAT. § 305/2; CAL. CIV. PROC. CODE. § 231.

Disability. One in four American adults is disabled. <https://www.cdc.gov/media/releases/2018/p0816-disability.html> Given the history of excluding this large population from many activities in American life, the Americans with Disabilities Act requires states to ensure that persons with disabilities have access to their courts. *See Tennessee v. Lane*, 541 U.S. 509 (2004). States must “take reasonable measures to remove . . . barriers to accessibility” and provide “all individuals a meaningful opportunity to be heard in its courts.” *Id.* at 531-32 (internal citation omitted). *See also* 28 C.F.R. 35.130(b)(7)(i). Additionally, one important category of disability is mental illness that does not incapacitate. Juror attitudes about mental disorders powerfully influence assessments of culpability. Thus, categorically banning persons who experience or understand such disabilities gives effect to invidious bias against not only potential jurors but actual defendants. *See Berryessa et al., Impact of Psychiatric Information on Potential Jurors in Evaluating High-Functioning Autism Spectrum Disorder* (hfASD), 8 J. Ment. Health Res. Intellect. Disabil. 140 (July 1, 2015) (internal citations omitted). All this militates in favor of including the disabled in juries, to the extent consistent with A.R.S. § 21-202.

National origin. When this Court adopted Canon 2.3(C), it barred bias in court proceedings on the basis of race, ethnicity, and national origin. The inclusion of these three statuses together in Rule 2.3(C) suggests that they should be included as a group in the proposed Rule, because if not protected, national origin can easily be used as a proxy for impermissible discrimination on the basis of race and ethnicity. *See People v.*

Rambersed, 649 N.Y.S.2d 640, 643 (Sup. Ct. 1996), *aff'd*, 680 N.Y.S.2d 205 (App. Div. 1998); *Castaneda v. Partida*, 430 U.S. 482, 495 (1977).

Age. Age discrimination commonly occurs in the jury selection, as defense and prosecution perceive age as a proxy for conviction bias, and youth as a proxy for defense bias. *See* Anwar et. al., *The Role of Age in Jury Selection and Trial Outcomes*, 57 J.L. & Econ. 1001 (Nov. 2014). These exclusions can make a jury impermissibly unrepresentative. *See, e.g., Julian v. State*, 215 S.E.2d 496, 499 (Ga. Ct. App. 1975) (pool of jurors averaging 69 years of age not fairly representative cross-section of community).

IV. THE PROPOSED RULE

The United States Supreme Court, and this Court, have recognized that the Supreme Court's *Batson* jurisprudence establishes a constitutional minimum, which states have the flexibility to expand to provide greater protections. *Porter*, 248 Ariz. at 396 (noting that “states do have flexibility in formulating appropriate procedures to comply with *Batson*,’ [but that to date] Arizona has not elaborated on the basic framework”) (quoting *Johnson v. California*, 545 U.S. 259 (2005)); *see also Smith v. Robbins*, 528 U.S. 259 (2000) (states have “wide discretion, subject to the minimum requirements of the Fourteenth Amendment, to experiment with solutions to difficult problems of policy”). Rule 24 as proposed in this Petition thus expands on the traditional *Batson* framework to provide greater protections against bias in jury selection in Arizona state court. The proposed Rule draws substantially from Washington's GR 37, with selective refinements intended to clarify the rule, to make it more neutral in application, and to simplify its application by litigants and trial courts.

A. Subdivision (a): Policy and Purpose

Subdivision (a) of the proposed Rule states its policy and purpose, to aid in its use and construction. Subdivision (a) makes clear that the Rule aims to broaden

protections against discrimination in jury selection beyond the baseline provided in *Batson*. It borrows language from Washington's GR 37(f) to describe different sources of bias that the Rule is intended to correct, but it goes beyond GR 37 in extending its protections to other categories protected by American constitutional law, Arizona's Constitution, and Arizona Supreme Court Rule 81, the Code of Judicial Conduct, at Canon 2.3(C), as explained more fully above.

B. Subdivision (b): Scope

Subdivision (b) is drawn verbatim from GR 37 and provides that the rule applies in all civil and criminal trials. Its scope mirrors *Batson*, which extends to civil trials. *See Felder v. Physiotherapy Assocs.*, 215 Ariz. 154 (App. 2007) (applying *Batson* in civil case).

C. Subdivision (c): Objection

Subdivision (c) of the proposed Rule contains the procedures for raising and ruling on an objection. While this subdivision generally tracks GR 37, it also incorporates some unique aspects of Arizona law and clarifies procedures relating to the timing of an objection.

The Objection. *Batson* requires the objecting party to make a prima facie showing of discrimination, *i.e.*, to provide evidence of purposeful discrimination, before an objection can be considered. *Batson*, 476 U.S. at 93. The proposed Rule eliminates this requirement, requiring only that the objection be made by “simple citation to this rule,” with further discussion conducted outside the presence of the jury panel.

Since subdivision (d) of the proposed rule eliminates the purposeful discrimination requirement, an objection that requires only a citation to the rule will ensure that the striking party must provide reasons for the strike or waiver. This, in turn, ensures that possible discrimination will be reviewed by the judge and a complete record will exist for an appellate court to review. The framework of the proposed rule is designed to produce answers on the record when discrimination may be infecting the

jury selection process.

Waiver as a Basis for an Objection. Subdivision (c) also explicitly provides that an objection may be based on the waiver of a peremptory challenge, consistent with Arizona case law.⁴ In *State v. Paleo*, 200 Ariz. 42 (2001), this Court ruled that waiver of a peremptory challenge may be “a relevant circumstance in establishing a prima facie case of discrimination because those of a mind to discriminate could manipulate the rules to prevent the seating of minority jurors.” *Id.* at 44 (internal quotation omitted). Consequently, because the waiver of a peremptory strike will result in the removal of a clearly identified juror, the waiver is not necessarily passive, but may be viewed as an effective strike of an identifiable juror.

Timeliness of an Objection. In the *Batson* context, this Court has ruled that an objection is untimely if made after the jury is empaneled and the stricken jurors excused. *State v. Harris*, 157 Ariz. 35 (1988). Other courts have held differently. *See, e.g., City of Seattle v. Erickson*, 398 P.3d 1124 (Wash. 2017); *Hill v. Berry*, 441 S.E.2d 6 (Va. 1994); *United States v. Thompson*, 827 F.2d 1254 (9th Cir. 1987). In *Harris*, this Court considered *Thompson* but distinguished it because, unlike in *Harris*, the basis for the objection in *Thompson* was not known until after the jury was empaneled. *Harris*, 157 Ariz. at 36, n.1. Consistent with that logic, the proposed Rule deems an objection timely if it is made after the jury is empaneled and is based upon information that could not have reasonably been known to the objecting party before the jury was empaneled. Even though the stricken jurors will likely have been excused by this time, the remedy of a mistrial is available to the trial court. *See Urrea*, 244 Ariz. at 447.

D. Subdivision (d): Response

Under subdivision (d), when a party has objected to a peremptory challenge

⁴ The proposed Rule's application to waivers of peremptory challenges is carried through the remainder of its subdivisions. *See* App'x A (Proposed Rule 24).

based on improper bias, the proposed Rule requires the proponent of the challenge to state the reasons why the strike was exercised or waived. This allows the court to make a determination on whether the strike was permissible under the Rule based on a complete record.

E. Subdivision (e): Determination

Subdivision (e) of the proposed Rule addresses the procedure to be followed by the trial court following an objection to a peremptory challenge under the Rule. The court is required to evaluate the reasons provided for the peremptory challenge, or waiver, in light of the totality of the circumstances. This subdivision of the proposed Rule builds and improves upon GR 37 in several important ways.

Key aspects of subdivision (e) are as follows:

(1) The proposed Rule modifies the third step of *Batson*, which requires a showing of purposeful discrimination, substituting a more practical standard under which a peremptory challenge is disallowed when the court finds “that any reasonable person could view” race or another protected status as motivating the strike or waiver. In this respect, the proposed Rule departs from GR 37, which used a more cumbersome “objective observer” test to decide whether a strike was improper, imputing to the “objective observer” an “aware[ness] that implicit, institutional, and unconscious biases, in addition to purposeful discrimination, have resulted in the unfair exclusion of potential jurors.” The proposed Rule is far simpler: If no reasonable person could view a peremptory strike as emanating from status-based bias, it stands. Otherwise, it falls.

(2) The proposed Rule adds language to incorporate the Court of Appeals' holding in *State v. Lucas*, 199 Ariz. 366 (App. 2001), that an invalid reason for a strike taints any valid reasons given. Thus, if any reasonable person could find that improper discrimination was a factor in the use or waiver of the challenge, the objection must be sustained “even if other valid reasons are offered.” See Proposed Rule 24(e).

(3) The proposed Rule requires the trial court to “explain its ruling on the record.” This requirement facilitates appellate review and is consistent with *Porter*, in which the Court of Appeals found that the trial court had failed to include necessary findings to support its rejection of a *Batson* challenge. *See* 248 Ariz. at 394.

F. Subdivision (f): Circumstances Considered

Subdivision (f) elaborates on the circumstances that the court “may consider” in evaluating the “totality of the circumstances” as required by subdivision (e). As proposed, this subdivision departs from GR 37 in several respects:

(1) The proposed Rule's list of circumstances is permissive, listing circumstances the court “may” consider. It also expressly allows the court to consider information and argument received from the parties on any of those circumstances.

(2) In subdivision (f)(v), the language of the rule was modified from GR 37 to be party-neutral, and to simply provide that the court may consider “any relevant history” regarding the use of peremptory challenges in the present case or in past cases.

(3) Finally, proposed (f) contains other non-substantive editorial revisions to streamline and clarify the language of GR 37.

G. Subdivision (g): Reasons Presumptively Invalid

Subdivision (g) lists six reasons for peremptory strikes that are historically linked to stereotypes associated with persons of color such as prior police experiences, friends or family contact with the criminal justice system, residing in a high-crime area, and attributes associated with poverty, morality, or immigration. To address two concerns of prosecutors and judges, the Working Group modified GR 37 to remove “distrust” of law enforcement as a presumptively invalid reason, and added language to provide a simple mechanism – which GR 37 lacked – to rebut the presumption that a peremptory strike falling under one of subdivision (g)'s categories is invalid.

Making these historically problematic questions presumptively invalid is

important because attorneys tend to rely heavily on stereotypes and generalizations when exercising peremptory challenges. *See, e.g.,* Donner, T., Gabriel, R., *Jury Selection: Strategy and Science* §§ 1-7 to 1-8 (3d ed. 2007). Stereotypes implicitly affect how an attorney perceives a prospective juror. Page, A., *Batson's Blind Spot: Unconscious Stereotyping and the Peremptory Challenge*, 85 B.U. L. Rev. 155, 209-10 (2005).

Some of the questions are problematic because in the guise of neutrality, they give voice to intertwined stereotypes that disproportionately exclude Black jurors. Poverty is connected to residency, which correlates to residing in areas of high crime, which is linked to negative perceptions of law enforcement. *See, e.g., Congdon v. State*, 424 S.E.2d 630, 632 (Ga. 1993) (Jurors were struck as the “result of a stereotypical belief that all black Ringgold residents were biased against the sheriff.”); *United States v. Bishop*, 959 F.2d 820, 828 (9th Cir. 1992) (strike made against poor resident of high crime area of Los Angeles. “Neighborhoods, crime and violence . . . [give] rise to tenacious stereotypes – innocent and unintentional perhaps, but stereotypes nonetheless.”).

Likewise, Black people have disproportionate contact with the criminal justice system. *See* Leipold, A., *Objective Tests and Subjective Bias: Some Problems of Discriminatory Intent in the Criminal Law*, 73 Chi.-Kent L. Rev. 559, 561 (1998) (“[T]here is plenty of statistical evidence that a disproportionate number of African Americans are arrested, charged, and convicted for crimes. . . .”). Often, minority jurors with friends or relatives who have been involved in the criminal justice system are removed by peremptory strikes while similarly situated Caucasians remain on the panel. *See, e.g., United States v. Houston*, 456 F.3d 1328, 1338 (11th Cir. 2006); *Devoil-El v. Goose*, 160 F.3d 1184, 1186 (8th Cir. 1998). Strikes based on friends or relatives having contact with law enforcement or the courts have a disparate impact and furthers the group stereotype that prospective minority jurors have negative views of law enforcement or the prosecution.

Being an unwed parent is linked to the stereotype of being immoral or

irresponsible. *See, e.g., People v. Thomas*, 559 N.E.2d 262, 266-267 (Ill. App. Ct. 1990) (Black unwed mother lacked “moral fiber.”). The same can be said for receiving state benefits. *United States v. Cobb*, 185 F.3d 1193, 1196 n.2 (11th Cir. 1999) (Black mother being unwed and on welfare “reflected on her morality[.]”).

Aside from the listed reasons being anchored in stereotypes, they can also be used as a proxy for race. Living in an area beset with crime can be synonymous with race or ethnicity. *Commonwealth v. Horne*, 635 A.2d 1033, 1035 (Pa.1994) (“Residence is too closely tied to race [to permit strike on that basis.]”). When the reason for the strike is residence in a high-crime area, this will exclude “everyone who lives on the 'wrong side of town,' which usually has a direct correlation with race.” Cavise, L., *The Batson Doctrine: The Supreme Court's Utter Failure to Meet the Challenge of Discrimination in Jury Selection*, 1999 Wis. L. Rev. 501, 532 (1999).

Being a non-native English speaker may be used as a pretext for racial or ethnic discrimination. *See, e.g., Pemberthy v. Beyer*, 19 F.3d 857, 872 (3d Cir. 1994) (“Because language-speaking ability is so closely correlated with ethnicity, a trial court must *carefully* assess the challenger's actual motivation”); *United States v. Canoy*, 38 F.3d 893, 900 (7th Cir. 1994) (courts should consider with care whether strike based on language ability is not a pretext for discrimination.).

While the proposed Rule recognizes the objectionability of five of the six questions in GR 37 (eliminating one), the proposed Rule improves on GR 37 by allowing the prosecution to rebut the presumption of invalidity by clear and convincing evidence that the basis for the challenge was unrelated to a protected status.

H. Subdivision (h): Reliance on Conduct

Nearly two decades ago, this Court recognized that when a subjective reason is used to justify a peremptory strike under *Batson*, there must be objective verification of the reason or it would be invalid. *State v. Cruz*, 175 Ariz. 395, 399-400 (1993).

Subjective reasons usually arise from unobserved conduct or are based on an impression. It is virtually impossible for the party opposing a strike to contest subjective reasons and it is absolutely impossible for an appellate court to scrutinize subjective reasons for a strike or waiver. The *Cruz* Court established a verification requirement because “elusive, intangible, and easily contrived explanations [should be viewed] with a healthy skepticism.” *Cruz*, 175 Ariz. at 399 (quoting *Daniels v. State*, 768 S.W.2d 314, 317 (Tex. App. 1998)). Subdivision (h) is consistent with *Cruz* in requiring the party contemplating use or waiver of a peremptory strike of a person within an identified class to notify the court and opposing counsel of the subjective basis so its existence may be observed, verified, and a record made. Failure to do so renders the subjective reason invalid.

I. Subdivision (i): Preserving Existing Law

Subdivision (i) provides that the Rule does not alter any statutory ground for excusing potential jurors. This section ensures that the proposed Rule does not impact Arizona's statutory grounds for disqualifying or excusing jurors from service – including those based on mental or physical disabilities. *See* A.R.S. §§ 21-201, 202, and 211. The section also makes clear an objection pursuant to *Batson v. Kentucky* based on purposeful discrimination must be raised independently of the proposed rule in order to be preserved.

V. ALTERNATIVES FOR ADOPTING THE PROPOSED RULE

Petitioner recognizes that proposed Rule 24 contains several attributes which could be severed in aid of adopting a narrower Rule 24, but that still serves the purposes at the core of this Petition. Options include:

A. This Court Could Adopt the Rule But Limit the Protected Statutes to Race and Ethnicity.

Washington state's GR 37, on which proposed Rule 24 is based, did not include

all categories this Petition proposes to include, and instead is limited to race and ethnicity. If the Court were disposed to enact Rule 24, but without some or all of these categories, the fix is simple: merely strike through any categories to be omitted where they appear in sections (a) and (e) of the proposed rule (which are the only places the categories are enumerated).

B. This Court Could Adopt the Rule Without References to Implicit and Unconscious Bias.

Proposed Rule 24 contains several references to “conscious” and “unconscious” bias, similar to the language of Washington's GR 37. *See* App'x A (Proposed Rule 24) at (a) (“Policy and Purpose”), and (e) (“Determination”). If the Court were disposed to enact Rule 24 without express reference to types of bias, it could do so by deleting those references in Sections (a) and (e) and in the Rule's proposed Comment.

C. This Court Could Adopt the Rule Without Proposed Subdivision (g)

Washington's GR 37 identifies certain reasons that are presumptively invalid as a basis for a peremptory strike, based on their historic disproportionate impact in striking jurors of color. The proposed Rule retains in Section (g) a scaled-back prohibition of those presumptively invalid reasons. Nevertheless, the Court could sever Section (g) without impairing the function of the remainder of the rule. Any such removal could be balanced with a Comment explaining that questions tending to disproportionately exclude jurors of color merit close scrutiny.

VI. CONCLUSION

Arizona has long been at the forefront of judicial and court reforms. This Court should adopt proposed Rule 24, which would respect the equality of all Arizonans by welcoming them equally into the jury box, strengthening the legitimacy of our law.

January 8, 2021

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Appendix A: Proposed Supreme Court Rule 24

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Rules of the Supreme Court of Arizona: Rule 24

a) Policy and Purpose. Because implicit, institutional, and unconscious biases, in addition to purposeful discrimination, have resulted in the unfair exclusion of potential jurors, this rule's purpose is to eliminate the unfair exclusion of potential jurors based on race, sex, gender, religion, national origin, ethnicity, disability, age, and sexual orientation, whether based on conscious or unconscious bias.

b) Scope. This rule applies in all jury trials.

c) Objection. A party may object to the use or waiver of a peremptory challenge on the basis of improper bias. The court may also raise this objection on its own. The objection must be made by simple citation to this rule, and any further discussion must be conducted outside the presence of the jury panel. The court must not excuse any potential jurors who have been the subject of a peremptory challenge or who have been removed from the panel due to the waiver of a peremptory challenge and who are the subject of an objection made pursuant to this rule until all peremptory challenges have been used or waived and any objections have been ruled upon. The objection must

be made before the jury is empaneled, unless information becomes known that could not reasonably have been known before the jury was empaneled.

d) Response. On objection to the use or waiver of a peremptory challenge pursuant to this rule, the party making or waiving the peremptory challenge must state the reasons that the peremptory challenge has been made or waived.

e) Determination. The court must then evaluate the reasons given to justify the peremptory challenge or waiver in light of the totality of circumstances. If the court determines that any reasonable person could view any of race, sex, gender, religion, national origin, ethnicity, disability, age, or sexual orientation, as a conscious or unconscious factor in the use or waiver of a peremptory challenge, then the objection must be sustained, even if other valid reasons are offered. The court need not find purposeful discrimination to sustain the objection. The court must explain its ruling on the record.

f) Circumstances Considered. In ruling on an objection or waiver, the court may receive argument or information from the parties, and may consider circumstances including, but not limited to:

- (i) the number and types of questions posed to the prospective juror or the panel by the party exercising or waiving the peremptory challenge, which may include:
 - a. failing to question the challenged juror about the stated reason for the challenge;
 - b. failing to question the jurors who were not challenged about the stated reason for the challenge;
 - c. asking significantly more or different questions of the challenged juror as opposed to other jurors; and
 - d. the types of questions asked of the challenged juror or the panel about the stated reason for the challenge.
- (ii) whether other prospective jurors provided similar answers to written or oral questions but were not the subject of a peremptory challenge or to removal by waiver by that party;
- (iii) whether a stated reason for exercising or waiving the peremptory challenge also applies to similarly situated jurors who were not the subject of the challenge or waiver;
- (iv) whether a reason might be disproportionately associated with race, sex, gender, religion, national origin, ethnicity, disability, age, or sexual orientation or ethnicity; and

(v) any relevant history concerning the use or waiver of peremptory challenges disproportionately against the race, sex, gender, religion, national origin, ethnicity, disability, age, or sexual orientation that is the subject of the challenge or waiver, in the present case or in past cases.

g) Reasons Presumptively Invalid. Because historically the following reasons for peremptory challenges have been associated with improper discrimination in jury selection, the following are presumptively invalid reasons for a peremptory challenge:

- (i) having past unfavorable experiences with law enforcement officers;
- (ii) having a close relationship with people who have been stopped, arrested, or convicted of a crime;
- (iii) living in a high-crime neighborhood;
- (iv) having a child outside of marriage;
- (v) receiving state benefits; and
- (vi) not being a native English speaker.

The presumption may be rebutted by clear and convincing evidence that the reason for the challenge is unrelated to a prospective juror's race,

sex, gender, religion, national origin, ethnicity, disability, age, or sexual orientation.

h) Reliance on Conduct. The following reasons for peremptory challenges also have historically been associated with improper discrimination in jury selection: allegations that the prospective juror was sleeping, inattentive, or staring or failing to make eye contact; exhibited a problematic attitude, body language, or demeanor; or provided unintelligent or confused answers. If any party intends to offer one of these reasons or a similar reason as the justification for a peremptory challenge, that party must provide reasonable notice to the court and the other parties so the behavior can be verified and addressed in a timely manner. A lack of corroboration by the judge or opposing counsel verifying the behavior shall invalidate the given reason for the peremptory challenge.

i) Preserving Existing Law. This rule does not alter any statutory ground for excusing potential jurors. Nor does it alter procedures for objecting to the use or waiver of a peremptory challenge on the basis of purposeful discrimination under the United States and Arizona Constitutions, which objections must be separately stated and established.

Comment

Historically, peremptory challenges have been used to exclude potential jurors from serving based on their race, ethnicity, sex, gender, religion, national origin, disability, age, and sexual orientation. The United States and Arizona Constitutions already prohibit some of these forms of discrimination, and Arizona's Code of Judicial Conduct bars all of them. Yet, existing court procedures under *Batson v. Kentucky*, 476 U.S. 79 (1986) are almost never successfully invoked and have failed to eliminate improper bias in the exercise of peremptory challenges.

As the United States Supreme Court has recognized, *Batson* sets a minimum standard under the United States Constitution, but states are free to adopt more robust procedures and standards to combat improper discrimination in jury selection. *See Johnson v. California*, 545 U.S. 162 (2005); *see also Smith v. Robbins*, 528 U.S. 259 (2000) (states have “wide discretion, subject to the minimum requirements of the Fourteenth Amendment, to experiment with solutions to difficult problems of policy”).

Rule 24's protections go beyond the floor set in *Batson* to provide greater protections against status-based bias in jury selection in Arizona. The rule is remedial in nature and should be broadly construed to further the purpose of eliminating the use of group stereotypes and discrimination in the exercise of peremptory challenges, even when unintended. Rather than requiring a showing of purposeful discrimination, Rule 24 requires the court to evaluate the reasons given to justify the challenge under a "totality of the circumstances." If the court finds that any "reasonable person" could view race, ethnicity, gender, religion, or any other protected status as a conscious or unconscious factor in the use or waiver of the peremptory challenge, the objection must be sustained. To facilitate review on appeal, the rule requires that the trial court must explain its ruling on the record.

The rule provides guidance on the types of circumstances that should be considered by the court in evaluating whether the exercise or waiver of a peremptory challenge was based on improper bias. *See* Rule 24(f) ("Circumstances Considered"). It also identifies reasons for peremptory challenges that are presumptively invalid based on their historic use to disproportionately exclude jurors based on protected statuses such as race and ethnicity. The presumption may be rebutted

on a showing that the reason for the challenge is unrelated to the challenged juror's race, ethnicity, or other protected status.

The rule does not alter the existing procedures and grounds for challenging jurors for cause, nor does it impact any statutory grounds for excusing or exempting jurors from service. The rule also preserves the existing constitutional framework for making a separate objection pursuant to *Batson v. Kentucky* on the basis of purposeful discrimination. *See* Rule 24(i) (“Preserving Grounds for Excuse or Objection”).

Appendix B: Working Group Members

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Appendix C: Bibliography of Articles and Research Studies

I. Academic Articles and Studies Addressing *Batson v. Kentucky*

1. Semel et al., Berkeley Law Death Penalty Clinic, *Whitewashing the Jury Box: How California Perpetuates the Discriminatory Exclusion of Black and Latinx Jurors* at vii-viii (June 2020) (finding “in...30 years, the California Supreme Court has reviewed 142 cases involving *Batson* claims and found a *Batson* violation only three times (2.1%)”; California courts of appeal “found error in just 18 out of 683 decisions” from 2006 through 2018 and concluding that “[r]acial discrimination is an ever-present feature of jury selection in California” and that “prosecutors most often relied on demeanor to strike Black jurors,” explaining that these demeanor-based reasons “correlate with racial stereotypes of African Americans”).
2. Sloan, A., “*What to do About Batson?*”: *Using a Court Rule to Address Implicit Bias in Jury Selection*, 108 CALIF. L. REV. 233 (Feb. 2020) (describing the practice of excluding jurors from service on the basis of their contact with the legal system as “doubly discriminatory” because African Americans typically have more contact with the criminal justice system, but then are consequently excluded from jury service and equal participation in the other side of the criminal process).
3. Wright, R.F., Chavis, K., & Parks, G.S., *The Jury Sunshine Project: Jury Selection Data as a Political Issue*, 2018 U. Ill. L. Rev. 1407 (2018) (finding that prosecutors “excluded black jurors at more than twice the rate that they excluded white jurors,” while defense attorneys “excluded black jurors less than half as often as they excluded white jurors,” and finding overall that “black jurors and other nonwhite jurors serve on juries at a slightly lower rate than white jurors”).
4. Abel, J., *Batson’s Appellate Appeal and Trial Tribulations*, 118 Colum. L. Rev. 713, 713 (Apr. 2018) (discussing *Batson* criticisms and reviewing appellate case law applying the doctrine; proposing that *Batson* is more effective on appeal than at the trial court level and arguing that appellate courts have an opportunity to apply *Batson* in a more rigorous fashion to address racial discrimination than do trial courts).
5. Pollitt, D., & Warren, B., *Thirty Years of Disappointment: North Carolina’s Remarkable Appellate Batson Record*, 94 N.C. L. Rev. 1957, 1957 (Sept. 2016) (finding that “[i]n the 114 cases decided on the merits by North Carolina appellate courts, the courts have never found a substantive *Batson* violation where a prosecutor has articulated a reason for the peremptory challenge of a minority juror”).

6. Johnson, V.B., *Arresting Batson, How Striking Jurors Based on Arrest Records Violates Batson*, 34 YALE L. & POL'Y REV. 387 (2016) (citing empirical data to show the existence of racial disparities throughout the criminal justice system, including in “policing, arrests, prosecution, plea offers, trial outcomes, and sentencing outcomes” and arguing that allowing peremptory strikes based on the nominally race-neutral justifications of prior contact with law enforcement or distrust of law enforcement, lets a proxy for race taint the jury selection process and “necessarily leads to whiter juries”).
7. Grasso, C.M. & O'Brien, B., *A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-Batson North Carolina Capital Jury Trials*, 97 Iowa L. Rev. 1531 (2012) (reviewing cases in which a state claim for relief was raised under the North Carolina Racial Justice Act of 2009 when capital defendants alleged “race was a significant factor in the exercise of peremptory challenges in their cases” and finding that over a twenty-year period “prosecutors struck eligible black venire members at about 2.5 times the rate they struck eligible venire members who were not black” after controlling “for information about venire members that potentially bore on the decision to strike them, such as views on the death penalty or prior experience with crime”).
8. Burke, A.S., *Prosecutors and Peremptories*, 97 Iowa L. Rev. 1467, 1476 (2012) (asserting that prosecutors should support the elimination of bias in jury selection; citing studies that “people are more likely to comply with legal authority when they perceive it to be legitimate. . . [and that p]eople are also more likely to cooperate with law enforcement when they perceive law enforcement's authority as legitimate.”).
9. Bellin, J. & Semitsu, J.P., *Widening Batson's Net to Ensnare More Than the Unapologetically Bigoted or Painfully Unimaginative Attorney*, 96 Cornell L. Rev. 1092 (2011) (reviewing “all opinions and orders between January 1, 2000 and December 31, 2009 in which a federal court evaluated a race-based *Batson* challenge in either a civil or criminal case ... unearth[ing] 269 federal decisions” and concluding that federal courts provide “little relief to *Batson* claimants”).
10. Page, A., *Batson's Blind Spot: Unconscious Stereotyping and the Peremptory Challenge*, 85 B.U. L. Rev. 155, 209-10 (2005) (discussing unconscious bias and its impact on jury selection).

11. Cavise, L., *The Batson Doctrine: The Supreme Court's Utter Failure to Meet the Challenge of Discrimination in Jury Selection*, 1999 Wis. L. Rev. 501, 532 (1999) (discussing *Batson* weaknesses after *Purkett*, and noting that returning to pre-*Purkett* law would strengthen the doctrine and that “little else is possible at this point without asking state trial and appellate courts to fashion their own *Batson* remedies”).
12. Jean Montoya, J., *What’s So Magic[al] About Black Women?: Peremptory Challenges as the Intersection of Race and Gender*, 3 Mich. J. Gender & L. 369 (1996) (suggesting that *Batson* alone has at times failed to work to prevent the apparent targeting of black women and Latino men with peremptory challenges).
13. Frasher, P., *Fulfilling Batson and Its Progeny: A Proposed Amendment to Rule 24 of the Federal Rules of Criminal Procedure to Attain a More Race- and Gender-Neutral Jury Selection Process*, 80 Iowa L. Rev. 1327, 1340 (July 1995) (concluding that “*Batson* arguably will afford little or no protection against discrimination by parties if the Supreme Court mandates merely a superficial inquiry into the racial and gender neutrality of a justification presented by the striking party”).
14. Raphael, M. & Ungvarsky, E., *Excuses, Excuses: Neutral Explanations Under Batson v. Kentucky*, 27 U. Mich. J. L. Ref. 237 (1993) (reviewing 800 *Batson* cases and concluding that “given the current case law, a prosecutor who wishes to offer a pretext for a race-based strike is unlikely to encounter difficulty in crafting a neutral explanation”).

II. Articles Addressing Gender, Age, Disability, and Sexual Orientation in Jury Selection

1. Flanagan, F., *Race, Gender, and Juries: Evidence from North Carolina*, 61 J.L. & Econ. 189 (May 2018) (explaining that race and gender composition of randomly selected jury pool has significant effect on probability of conviction).
2. McNamarah, C., *Sexuality on Trial: Expanding Peña-Rodriguez to Combat Juror Queerphobia*, 17 Dukeminier Awards J. Sexual Orientation & Gender Identity L. 393, 400 (2018) (summarizing studies that concluded, in one, that 17% of jurors said they could not be fair to a gay defendant; in another, 12%; in another, “[t]hree-and-a-half times more people said that they could not be fair and impartial if a party to a case was gay than said that they could not be fair if a party was female, black, or Latino.”).

3. Eisenberg, A., *Removal of Women and African Americans in Jury Selection in South Carolina Capital Cases, 1997-2012*, 9 Ne. U. L. Rev. 299 (Summer 2017) (finding both defense and prosecution exercised strikes on the basis of gender, suggesting the use of gender as proxy for decisional bias).
4. Berryessa et al., *Impact of Psychiatric Information on Potential Jurors in Evaluating High-Functioning Autism Spectrum Disorder (hfASD)*, 8 J. Ment. Health Res. Intellect. Disabil. 140 (July 1, 2015) (discussing importance of allowing jurors with non-incapacitating mental disorders to serve).
5. Anwar et. al., *The Role of Age in Jury Selection and Trial Outcomes*, 57 J.L. & Econ. 1001 (Nov. 2014) (discussing that age discrimination is common in jury selection).
6. Shay G., *In the Box: Voir Dire on LGBT Issues in Changing Times*, 37 Harv. J.L. & Gender 407 (2014) (discussing range of negative attitudes expressed by potential jurors to LGBT issues, the complexities of questioning prospective jurors on these issues, and suggesting best practices for *voir dire*).
7. Hightower, S. *Sex and the Peremptory Strike: An Empirical Analysis of J.E.B. v. Alabama's First Five Years*, 52 Stan. L. Rev. 895 (April 2000) (studying cases during the five years after the United States Supreme Court decided *J.E.B. v. Alabama* and finding that *J.E.B.*-based challenges to the use of peremptory strikes were most common in murder cases, not gender-sensitive cases and that most *J.E.B.*-based challenges were made in criminal cases, with 87% of death penalty cases involving claims that the prosecutor was improperly striking women).
8. Wagner, S., *Annotation, Examination and Challenge of State Case Jurors on Basis of Attitudes Toward Homosexuality*, 80 A.L.R.5th 469 (2000) (collecting cases that have discussed *voir dire* of jurors for prejudice against same-sex sexuality and developing rules about juror questioning on this issue).

III. Articles and Research Studies on Criminal Justice System

1. Santhanam, L., *Two-thirds of black American don't trust the police to treat them equally. Most white Americans do*, PBS NEWS HOUR, (June 5, 2020) (citing the latest PBS NewsHour-NPR-Marist poll, which found that “[n]early half of black Americans have very little or no confidence that police officers in their community treat people with different skin colors the same,” while overall “only 18 percent of Americans take that view” and concluding “that people of different races are living different realities in the United States”), *available at*: <https://www.pbs.org/newshour/politics/two-thirds-of-black-americans-dont-trust-the-police-to-treat-them-equally-most-white-americans-do>.
2. Morin, R. & Stapler, R., *The Racial Confidence Gap in Police Performance*, PEW RESEARCH CTR. (Sept. 29, 2016) (finding that while 36% of Americans have “a lot of confidence in their police department,” that figure split sharply along racial lines with white Americans three times as likely as Black Americans to have “a lot of confidence in police” – 42% to 14% – and, similarly, while only 6% of white Americans had no confidence at all in their local police, 24%—almost a quarter—of Black Americans had no such confidence”), *available at*: <https://www.pewsocialtrends.org/2016/09/29/the-racial-confidence-gap-in-police-performance/#fn-22079-1>.
3. New York Civil Liberties Union, *Stop-and-Frisk in the de Blasio Era*, (March 2019) (finding that despite a drastic decline in the number of New York Police Department stops since 2011, “[f]our out of every five reported stops were of black or Latino people” and noting that “[w]hile they account for five percent of the city’s population, black and Latino males between the ages of 14 and 24 accounted for 38 percent of reported stops between 2014 and 2017”), *available at*: https://www.nyclu.org/sites/default/files/field_documents/20190314_nyclu_stopfrisk_singles.pdf.
4. Carbado, V.W. & Rock, P., *What Exposes African Americans to Police Violence?*, 51 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 159 (2016) (explaining why police violence disproportionately affects African Americans and concluding that the combination of (1) aggressive masculinity in both policing and black communities and (2) the experience of being repeatedly stopped by police, which engenders resistance to police authority, as driving forces of aggressive policing of African Americans and mutual distrust).

5. Flaherty, J., *It Wasn't Just Sheriff Joe: DPS Troopers Are More Likely to Search Latino, Black Drivers*, New Times Finds, PHOENIX NEW TIMES, (Aug. 14, 2007) (reviewing the Arizona-specific data compiled by the Stanford Open Policing Project and finding that Hispanic drivers in Arizona who were stopped by Department of Public Safety (DPS) officers were 2.5 times more likely to be searched than white drivers despite a lower rate of contraband being found among those Hispanic drivers as compared to white drivers who were searched), available at: <https://www.phoenixnewtimes.com/news/black-latino-drivers-in-arizona-more-likely-searched-by-troopers-9570746>.
6. Leipold, A., *Objective Tests and Subjective Bias: Some Problems of Discriminatory Intent in the Criminal Law*, 73 Chi.-Kent L. Rev. 559, 561 (1998) (noting “there is plenty of statistical evidence that a disproportionate number of African Americans are arrested, charged, and convicted for crimes. . . .”).
7. Analise Ortiz & Melissa Kovacs, *The Racial Divide of Prosecutions in the Maricopa County Attorney’s Office*, ACLU of Arizona (2020) (finding that (1) “Black and Hispanic people prosecuted by the Maricopa County Attorney’s Office spend significantly more time incarcerated than white people”; (2) “[w]hen prosecuted for simple marijuana possession, Hispanic people are sentenced to significantly longer jail and prison sentences than their white and Black counterparts”; (3) “[w]hen prosecuted for personal possession of drug paraphernalia, Black people consistently receive longer prison, jail and probation sentences than white or Hispanic people”; (4) “[w]hite people are more likely to have cases dismissed or not filed than individuals of any other race”; and (5) “[w]hen ordered to pay a fine, Hispanic people pay significantly higher fines than white people”), available at: [https://www.acluaz.org/sites/default/files/7.16embargofinal the racial divide 2020.pdf](https://www.acluaz.org/sites/default/files/7.16embargofinal%20the%20racial%20divide%202020.pdf).
8. STANFORD OPEN POLICING PROJECT, *Findings: The Results of our National Analysis of Traffic Stops and Searches* (2020) (reviewing nearly 100 million traffic stops from across the country and finding “significant racial disparities in policing,” including “that officers generally stop black drivers at higher rates than white drivers” and that “[i]n nearly every jurisdiction stopped black and Hispanic drivers are searched more often than white drivers.” Also finding in Arizona that both Black and Hispanic drivers were searched at 2.5 times the rate at which white drivers were searched), available at: <https://openpolicing.stanford.edu/findings/>.

9. United States Sentencing Commission, “Demographic Differences in Sentencing: An Update to the 2012 *Booker* Report, Nov. 2017 (finding that when black men and white men commit the same crime, black men on average receive a sentence almost 20 percent longer after controlling for variables such as age and prior criminal history), *available at*: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf.

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Appendix D:

**SUMMARY OF ARIZONA APPELLATE OPINIONS AND MEMORANDUM DECISIONS
ADDRESSING *BATSON* CHALLENGES**

APPENDIX D

SUMMARY OF ARIZONA APPELLATE OPINIONS AND MEMORANDUM DECISIONS ADDRESSING *BATSON* CHALLENGES¹

Color Key: Cases in which a *Batson* challenge was successful on appeal are highlighted in **yellow**. Cases in which the appellate court remanded for further *Batson* findings by the trial court are highlighted in **blue**.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
1.	<i>State v. Smith</i> , CR-18-0295-AP, 2020 WL 6478480 (Ariz. Nov. 4, 2020)	State of Arizona (P)	<i>Batson</i> challenge by: Black Male Defendant Challenged Juror: Two Black jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons:(i) first juror was hesitant to impose death penalty; and (ii) second juror had medical appointments conflicting with trial schedule, suffered from migraines, and took daily medication.

¹ This summary is arranged in reverse chronological order and includes all Arizona appellate opinions and memorandum decisions addressing the merits of challenges based on *Batson v. Kentucky* since 1987. For data purposes, the summary includes unpublished cases. It excludes cases in which the appellate court determined that the objection was waived, untimely, or otherwise did not reach the merits of the challenge. For completeness, both the Court of Appeals and the Arizona Supreme Court's decisions in *State v. Urrea* are included (#18 and #26, above), and are counted in the total number of cases in which *Batson* challenges have been successful on appeal. See Appendix E (graphs summarizing successful versus unsuccessful *Batson* challenges in Arizona appellate opinions and memorandum decisions).

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
2.	<i>State v. Fortune</i> , No. 1 CA-CR 19-0635, 2020 WL 5200959 (Ariz. Ct. App. Sept. 1, 2020).	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Female defendant Challenged Juror: Unknown Race Female Pastor	<i>Batson</i> challenge unsuccessful. Court of Appeals found that the superior court did not clearly err in finding the State's peremptory strikes did not violate <i>Batson</i> because concerns that a religious pastor may be predisposed to forgiveness is a neutral reason that, when coupled with other bases for removal, did not violate <i>Batson</i> .	Stated reasons: (i) juror's occupation as a pastor could predispose her to forgiveness; and (ii) an attorney in the prosecutor's office personally knew the juror and considered her "very liberal" and "inclined to make up her own rules."
3.	<i>State v. Palmer</i> , No. 1 CA-CR 18-0812, 2020 WL 3790524 (Ariz. Ct. App. Jul. 7, 2020).	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male defendant Challenged Juror: Black Juror	Case remanded to trial court for further <i>Batson</i> findings. Court of Appeals found that the superior court erred in accepting the State's explanation as race-neutral and that the trial court's reasons for denying the challenge were ambiguous.	Stated reasons: Juror's alleged confusion during questioning, coupled with argument that the timing of the strike (fourth of six strikes) showed it was not racially motivated.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
4.	<i>State v. Womble</i> , No. 1 CA-CR 19-0340, 2020 WL 4188019 (Ariz. Ct. App. Jul. 2, 2020)	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male Defendant Challenged Juror: Hispanic Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) juror had eight children close in age to the defendant and thus might sympathize with him; and (ii) there was little information about her except that she was a medical assistant in Phoenix.
5.	<i>State v. Bate</i> , No. 1 CA-CR 19-0045, 2020 WL 2394818 (Ariz. Ct. App. May 12, 2020).	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male defendant Challenged juror: Racial Minority Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: Juror's occupation as an engineer with a background in "computer science in engineering" and that "engineer types get bogged down in the minutiae."
6.	<i>State v. Arias</i> , No. 1 CA-CR 15-0302, 2020 WL 5653242 (Ariz. Ct. App. Apr. 21, 2020).	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Female Defendant Challenged Jurors: Six Female Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were gender-neutral and not pretextual.	Stated reasons: (i) some of the stricken jurors had a history of domestic violence; (ii) all of the stricken jurors had expressed "considerable reservation" about imposing the death penalty; (iii) one of the stricken jurors had expressed hostility to the prosecution through body language.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
7.	<i>State v. Gonzalez</i> , No. 2 CA-CR 2018-0201, 2020 WL 1862301 (Ariz. Ct. App. Apr. 13, 2020).	State of Arizona (P)	<i>Batson</i> challenge by: Hispanic Male Defendant Challenged Jurors: Six Males	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were gender-neutral and not pretextual.	Stated reasons: (i) jurors lacked life experience (as evidenced by limited employment history and a lack of spouse, children, or jury experience); (ii) relationships with attorneys or people in "defendant-type" roles; (iii) professional experience with DNA; (iv) arrest history; and (v) tendencies to make gestures or speak frequently during jury selection.
8.	<i>State v. Porter</i> , 248 Ariz. 392, 460 P.3d 1276 (Ct. App. 2020), review granted (Nov. 3, 2020)	State of Arizona (P)	<i>Batson</i> challenge by: Black Female Defendant Challenged Jurors: Two Black Jurors	Case remanded to trial court for further <i>Batson</i> findings. Court of Appeals found that the trial court failed to make a finding concerning Juror 2's demeanor, making its "conclusory statement that there was no purposeful discrimination [] not sufficient." With "nothing in the record to suggest that [the trial court] proceeded past step two of the <i>Batson</i> analysis," Court of Appeals remanded the case for the trial court to properly apply <i>Batson</i> .	Stated reasons: Juror 2: (i) juror's brother convicted of same charge as defendant; and (ii) juror "did not seem to be very sure with her responses to the State whether how [sic] that impacted her or not." Juror 20: (i) juror "had been on a criminal jury in the past which had found an individual not guilty;" and (ii) had been the foreperson of that jury.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
9.	<i>State v. Boyd</i> , No. 1 CA-CR 19-0060, 2020 WL 113900 (Ariz. Ct. App. Jan. 9, 2020).	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male Defendant Challenged Juror: Hispanic Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) prosecutor had trouble hearing the juror; and (ii) "was concerned that her lack of assertiveness and her general volume would be a problem throughout the trial."
10.	<i>State v. Gentry</i> , 247 Ariz. 381, 449 P.3d 707 (Ct. App. 2019).	State of Arizona (P)	<i>Batson</i> challenge by: Male Defendant. Challenged Juror: Black Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) juror had a pre-planned trip that might conflict with final days of trial; (ii) juror's family members and son's father had prior felony convictions; (iii) juror had a blended family, including stepchildren and biological children in her household; and (iv) her husband served in the military and worked at a bank.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
11.	<i>State v. Hancock</i> , No. 2 CA-CR 2018-0138, 2019 WL 2622529 (App. June 26, 2019), review denied (Jan. 7, 2020).	State of Arizona (P)	<i>Batson</i> challenge by: Hispanic Male Defendant Challenged Jurors: Six Male jurors	<i>Batson</i> challenge unsuccessful. Stated reasons held gender-neutral and not pretextual.	Stated reasons: (i) juror one was an engineer; (ii) juror four seemed to be an avid golfer and case occurred at a golf course; (iii) juror five was a pizza-delivery driver who appeared reluctant to serve; (iv) juror seven was elderly and reading a “cowboy justice” book; (v) juror thirteen had family member accused of similar offense; and (vi) juror twenty-one was teacher and prosecutor “almost always” strikes teachers.
12.	<i>State v. Ybarra</i> , No. 2 CA-CR 2017-0286, 2019 WL 2233299 (App. May 22, 2019).	State of Arizona (P)	<i>Batson</i> challenge By: Unknown Race Male Defendant Challenged Juror: Black juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) juror indicated she watched and believed some fictional crime and courtroom TV shows were accurate; (ii) juror’s body language indicated she did not understand some questioning; and (iii) juror’s uncle was convicted of molestation.
13.	<i>State v. Oviedo</i> , No. 1 CA-CR 18-0236, 2019 WL 1912188 (Ariz. Ct. App. Apr. 30, 2019).	State of Arizona (P)	<i>Batson</i> challenge By: Unknown Race Male Defendant Challenged Juror: Black Male Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) juror was “single” while the “victims in the case were married”; (ii) juror did not have any children whereas the victims did have children; and (iii) juror was “around 22 years old” and “lack[ed] [life] experience.”

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
14.	<i>State v. Kavu</i> , 2019, No. 1 CA-CR 18-0122, WL 1750899 (Ariz. Ct. App. Apr. 16, 2019).	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male Defendant Challenged Juror: Minority Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: Juror stated that she felt uncomfortable judging another person's culpability and stated it was "like playing God."
15.	<i>State v. Jones</i> , No. 2 CA-CR 2018-0161, 2019 WL 1125493 (Ariz. Ct. App. Mar. 12, 2019).	State of Arizona (P)	<i>Batson</i> challenge by: Black Male Defendant Challenged Juror: Black Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: Juror lived in a community where she felt the police unfairly target individuals and indicated she would have a difficult time believing the testimony of a law enforcement officer.
16.	<i>State v. Favor</i> , No. 1 CA-CR 17-0104, 2018 WL 5990341 (Ariz. Ct. App. Nov. 15, 2018)	State of Arizona (P)	<i>Batson</i> challenge by: Black Male Defendant Challenged Juror: Two Minority Jurors.	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) first juror "talked about his close family members who are involved in drug offenses, including his son and some nephews that had either taken plea agreements, gone to trial [or] gone to prison;" and (ii) second juror "expressed that he was favorable to the idea that marijuana should not be illegal."

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
17.	<i>State v. Murray</i> , No. 2 CA-CR 2018-0313, 2018 WL 5729356 (Ariz. Ct. App. Nov. 1, 2018).	State of Arizona (P)	<i>Batson</i> challenge by: Black Male Defendant. Challenged Juror: Black Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: Juror stated that his son had previously been arrested for assault and battery.
18.	<i>State v. Urrea</i> , 244 Ariz. 443, 421 P.2d 153 (2018).	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male Defendant Challenged Juror: Five Hispanic jurors	<i>Batson</i> challenge successful on appeal. State conceded <i>Batson</i> challenge. Supreme Court affirmed the Court of Appeals' holding that reinstating improperly struck jurors is an appropriate remedy for a <i>Batson</i> violation.	Before the Supreme Court, the State conceded <i>Batson</i> error and no information was provided on the reasons given to the trial court.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
19.	<i>State v. Winiker</i> , No. 1 CA-CR 17-0447, 2018 WL 3358963 (Ariz. Ct. App. Jul. 10, 2018).	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male Defendant Challenged Juror: Five Minority Jurors (3 Hispanic Jurors, 2 Unknown Race)	<i>Batson</i> challenge unsuccessful. Stated reason held race-neutral.	Stated reasons: (i) one juror's casual appearance and recent arrest history; (ii) second juror's previous arrests and work conflicts; (iii) third juror's hardship; (iv) fourth juror's employment as a high school baseball coach which could lead juror to be sympathetic to young, male defendant; and (v) fifth juror's employment as a school translator and her son's arrest increased likelihood of sympathizing with the defendant.
20.	<i>State v. Mull</i> , No. 1 CA-CR 17-0374, 2018 WL 2111251 (Ariz. Ct. App. May 8, 2018)	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male Defendant Challenged Jurors: Three Minority Jurors (with Hispanic-sounding last names).	<i>Batson</i> challenge unsuccessful. Court of Appeals did not find reversible error after reviewing the record pursuant to <i>Anders v. California</i> , 386 U.S. 738 (1967) and <i>State v. Leon</i> , 104 Ariz. 297 (1969).	No information provided.
21.	<i>State v. Anaya</i> , No. 1 CA-CR 16-0839, 2017 WL 6328372 (Ariz. Ct. App. Dec. 12, 2017)	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male Defendant Challenged Juror: Minority Juror.	<i>Batson</i> challenge unsuccessful. Stated reason held race-neutral.	Stated reasons: Juror's young age (22 years old), lack of family, and residence outside Flagstaff city limits.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
22.	<i>State v. Payan</i> , No. 1 CA–CR 16–0683, 2017 WL 4127693 (Ariz. Ct. App. Sept. 19, 2017)	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male Defendant Challenged Juror: Minority Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual.	Stated reasons: State’s difficulty understanding the juror’s speech, explaining that the Prosecutor heard the juror say her father was a drug counselor while his co-counsel heard her say her father was in counseling for drug abuse.
23.	<i>State v. Ford</i> , No. 1 CA–CR 16–0652, 2017 WL 3764524 (Ariz. Ct. App. Aug. 31, 2017)	State of Arizona (P)	<i>Batson</i> challenge by: Hispanic Male Defendant. Challenged Juror: Black Female Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual.	Stated reasons: Concern for juror’s financial hardship.
24.	<i>State v. Alvarez-Lopez</i> , No. 1 CA–CR 16–0372, 2017 WL 3184531 (Ariz. Ct. App. Jul. 27, 2017)	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male Defendant Challenged Juror: Two Minority Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual.	Stated reasons: Both jurors had family members or close relations who had felony convictions.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
25.	<i>State v. Shepherd</i> , No. 1 CA–CR 15–0498, 2017 WL 2687666 (Ariz. Ct. App. Jun. 22, 2017)	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male Defendant Challenged Juror: Minority Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual.	Stated reasons: Juror stated that she would have difficulty rendering a fair decision and not considering the penalty in determining guilt.
26.	<i>State v. Urrea</i> , 242 Ariz. 518, 398 P.3d 584 (Ct. App. 2017), <i>aff’d</i> , 244 Ariz. 443, 421 P.2d 153 (2018).	State of Arizona (P)	<i>Batson</i> challenge by: Hispanic Male Defendant Challenged juror: Five Hispanic Jurors	Successful <i>Batson</i> challenge. Court of Appeals concluded that the superior court’s reinstatement of improperly struck jurors was an appropriate remedy for a <i>Batson</i> violation.	The prosecution failed to convince the superior court that three of the five strikes were constitutionally valid. As a remedy, the trial court forfeited the State’s strikes and empaneled those jurors.
27.	<i>State v. Reid</i> , No. 2 CA–CR 2016–0211, 2017 WL 728230 (Ariz. Ct. App. Feb. 23, 2017)	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male Defendant. Challenged Juror: Black Male	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) Juror seemed to pay more attention to the defense than the prosecution; and (ii) juror knew someone who worked at either the office of the county public defenders or the county attorney office.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
28.	<i>State v. Love</i> , 2017 WL 443537 No. 1 CA-CR 15-0805 (Ariz. Ct. App. Feb. 2, 2017)	State of Arizona (P)	<i>Batson</i> challenge by: Black Male Defendant Challenged Juror: Three Minority Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) one juror's language barrier; (ii) another juror's demeanor was quiet, timid and withdrawn; and (iii) a third juror had experience working at a correctional facility with sex offenders.
29.	<i>State v. Wright</i> , No. 1 CA-CR 16-0661, 2017 WL 411322 (Ariz. Ct. App. Jan. 31, 2017).	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male Defendant Challenged Juror: Black Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Prosecution stated the peremptory strike was based on the juror's prior jury experience.
30.	<i>State v. Escalante-Orozco</i> , 241 Ariz. 254, 386 P.3d 798 (2017).	State of Arizona (P)	<i>Batson</i> challenge by: Hispanic Male Defendant Challenged Juror: Five Minority Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) all struck jurors indicated opposition to or hesitance about the death penalty; (ii) additionally, juror 36 voiced concerns about viewing graphic images in case; and (iii) the prosecution was concerned juror 71's occupation as high school teacher may influence her.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
31.	<i>State v. Tarpley</i> , No. 1 CA-CR 15-0811, 2016 WL 6956623 (Ariz. Ct. App. Nov. 29, 2016)	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male Defendant Challenged Juror: Black Male	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) juror's comments that his friend's experience in the criminal justice system may prejudice him against the State; and (ii) lack of responsiveness to questions posed by the court.
32.	<i>State v. Burns</i> , No. 2 CA-CR 2015-0278, 2016 WL 5795721 (Ariz. Ct. App. Oct. 4, 2016)	State of Arizona (P)	<i>Batson</i> challenge by: Black Male Defendant Challenged Juror: Black Female Juror.	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) juror's family member's former conviction; (ii) her legal experience; (iii) her change in career; and (iv) that she could not recall any details about a jury trial on which she had served as a juror.
33.	<i>State v. Orner</i> , No. 1 CA-CR 15-0580, 2016 WL 4916781 (Ariz. Ct. App. Sept. 15, 2016)	State of Arizona (P)	<i>Batson</i> challenge by: Hispanic Male Defendant Challenged Juror: Minority Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: Limited information available on the juror.
34.	<i>State v. Reyes</i> , No. 1 CA-CR 15-0260, 2016 WL 4193936 (Ariz. Ct. App. Aug. 9, 2016)	State of Arizona (P)	<i>Batson</i> challenge by: Hispanic Male Defendant Challenged Juror: Three Minority Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) juror 2 was evasive and noncooperative during questioning; (ii) juror 13 had family members with drug offenses; and (iii) juror 45's spouse did criminal law work.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
35.	<i>State v. Parker</i> , No. 2 CA–CR 2016–0177–PR, 2016 WL 3959974 (Ariz. Ct. App. Jul. 21, 2016)	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male Defendant Challenged Juror: Four Minority Jurors	<i>Batson</i> challenge unsuccessful. Stated reason held race-neutral.	Stated reasons: (i) two of the four jurors had been charged or convicted of a DUI (ii) one juror was an assault victim; (iii) two of the four jurors also believed drugs should be legalized; (iii) one juror’s son was involved in a previous possession of marijuana and possession of drug paraphernalia charge; and (iv) <i>one</i> juror was currently a judge and failed to “give any further information in regards to what her previous employment was.” The prosecution also noted one of the challenged jurors did not identify as a racial minority and that the jury included four minority jurors.
36.	<i>State v. Heinekamp</i> , No. 1 CA–CR 15–0355, 2016 WL 3600232 (Ariz. Ct. App. Jun. 30, 2016)	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Female Defendant Challenged Juror: Unspecified Minority	<i>Batson</i> challenge unsuccessful. Stated reason held race-neutral.	No specific information provided.
37.	<i>State v. Juarez</i> , 1 CA–CR 15–0308, 2016 WL 1064893 (App. Mar. 17, 2016).	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male Defendant Challenged Juror: A black Female Juror	<i>Batson</i> challenge unsuccessful. Stated reason held race-neutral.	Stated reasons: Juror was a teacher and “teachers tend to believe that students lie a lot.”

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
38.	<i>State v. Quimayousie</i> , No. 1 CA–CR 14–0749, 2016 WL 1033308 (Ariz. Ct. App. Mar. 15, 2016)	State of Arizona (P)	<i>Batson</i> challenge by: Native American Male Defendant Challenged Juror: Native American Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) Juror did not have children; (ii) appeared satisfied that she had previously testified against her supervisor; and (iii) failed to promptly disclose a past conviction.
39.	<i>State v. Makel</i> , No. 1 CA–CR 15–0091 2016 WL 911356 (Ariz. Ct. App. Mar. 10, 2016)	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Female Defendant Challenged Juror: Black Female Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual.	Stated reasons: Juror was a certified nurse and prosecution was striking all nurses.
40.	<i>State v. Decker</i> , 239 Ariz. 29, 365 P.3d 954 (Ct. App. 2016)	State of Arizona (P)	<i>Batson</i> challenge by: Black Defendant Challenged Juror: Two Black Jurors	<i>Batson</i> challenge unsuccessful. The Court of Appeals noted a black juror was impaneled, suggesting the strikes were not purposefully discriminatory and the State’s explanation was facially race-neutral.	Stated reasons: (i) one juror failed to answer all questions during voir dire and failed to follow court’s instructions to remain outside the courtroom during a break; and (ii) second juror gave very little personal information during voir dire and appeared reluctant to serve.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
41.	<i>State v. Drew</i> , No. 1 CA–CR 14–0451, 2015 WL 5309364 (Ct. App. Sept. 10, 2015)	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male Defendant Challenged Juror: Black Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) juror needed to pick up his children from school; (ii) had family members in the Department of Corrections; and (iii) his wife worked for a criminal defense firm.
42.	<i>State v. Lynch</i> , 238 Ariz. 84, 357 P.3d 119 (2015)	State of Arizona (P)	<i>Batson</i> challenge by: White Male Defendant Challenged Juror: Five Hispanic Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) one juror was opposed to the death penalty; (ii) one juror had past jury experience; (iii) one juror had tattoos and so might sympathize with the defendant; (iv) one juror “had ‘facial hair resembl[ing] ZZ Top’ and a long ponytail ‘like Jerry Garcia;’” and (v) one juror had family member convicted of child abuse.
43.	<i>State v. Gonzales</i> , No. 1 CA–CR 13–0675, 2015 WL 3767328 (Ariz. Ct. App. Jun. 16, 2015)	State of Arizona (P)	<i>Batson</i> challenge by: Hispanic Male Defendant Challenged Juror: Minority Juror (with Hispanic surname)	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual.	Stated reasons: Juror had no children. Prosecution also noted it did not use peremptory strikes on other jurors with Hispanic last names.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
44.	<i>State v. Willis</i> , No. 1 CA-CR 14-0041, 2015 WL 993304 (Ariz. Ct. App. Mar. 5, 2015)	State of Arizona (P)	<i>Batson</i> challenge by: Unknown Race Male Defendant Challenged Jurors: One Asian juror, three Hispanic Jurors, and one Minority Juror (with a Hispanic sounding surname)	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) multiple jurors were non-responsive or gave short or curt responses; (ii) multiple jurors appeared reluctant to serve on jury; (iii) one juror had convicted family member, was a crime victim, and expressed bias against police; (iv) one juror had associates currently being prosecuted; and (v) one juror had experience with banking that would influence her and had previously served on a jury.
45.	<i>State v. Torres</i> , 1 CA-CR 13-0707, 2014 WL 4374066 (App. Sept. 4, 2014)	State of Arizona (P)	<i>Batson</i> challenge by: Hispanic Male Defendant Challenged Juror: Hispanic Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: Concerns regarding the juror's truthfulness because the juror had stated on her juror form she was a cashier, but during voir dire stated she was a cook.
46.	<i>State v. Davis</i> , 2014 WL 4269117 (Ariz. Ct. App. Aug. 29, 2014)	State of Arizona (P)	<i>Batson</i> challenge made by: Black Male Defendant Challenged Juror: Black Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) juror did not have children; and (ii) juror had a friend convicted of a serious offense.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
47.	<i>State v. Brown</i> , No. 1 CA-CR 13-0608, 2014 WL 2565551 (Ct. App. Jun. 5, 2014)	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Juror: Asian Male	<i>Batson</i> challenge successful. The Court of Appeals reversed the defendant's conviction and sentence and remanded for a new trial on finding that the lower court committed clear error during the third step of the <i>Batson</i> analysis.	Stated reasons: (i) "serious concerns about his ability to understand English, legal terminology, and also keep up with the speed at which trial proceeds based on... his ability to articulate the English language" during jury voir dire; (ii) concern that juror would not understand "slang terminology and lingo, cop talk, and all the likes" during trial. The juror did not have the opportunity to speak "more than a sentence or two during voir dire." And there was no evidence on the record that his demeanor suggested he didn't understand the proceedings. The juror did not require the assistance of an interpreter.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
48.	<i>State v. Jakscht</i> , No. 1 CA-CR 12-0731, 2014 WL 2466284 (Ct. App. May 29, 2014)	State of Arizona (P)	Batson Challenge made by: Male Defendant Challenged Juror: Black Juror	<i>Batson</i> challenge unsuccessful. The defendant argued 13 of 15 jurors could have been struck for similar reasons and race was the difference, but the court found that no other juror had all the referenced reasons for the peremptory strike.	Stated reasons: (i) Juror “had friends who were involved in drug trafficking and a cousin convicted of armed robbery;” and (ii) juror was a professional driver for a parcel delivery service and state did not want a professional driver on the jury.
49.	<i>State v. Murrietta</i> , Nos. 1 CA–CR 12–0460, 1 CA–CR 12–0665, 2014 WL 890332 (Ariz. Ct. App. Mar. 6, 2014).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Juror: Black Juror	<i>Batson</i> challenge unsuccessful. Court of Appeals found that the defendant failed to demonstrate prima facie discrimination (step one of <i>Batson</i>). The court highlighted that the defendant was Hispanic and not Black and that “other persons with Hispanic surnames remained on the jury.”	Opinion did not specify.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
50.	<i>State v. Epps</i> , No. 2 CA–CR 2012–0430, 2014 WL 668925 (Ariz. Ct. App. Feb. 19, 2014).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Juror: Hispanic Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld the trial court’s determination that strike was race-neutral, but notes that the withdrawal also moots the issue.	Stated reasons: juror had a “fairly forceful personality... [and] would control the jury and encourage people to vote in a way that they did not want to.”
51.	<i>State v. Archuleta</i> , No. 1 CA–CR 12–0419, 2013 WL 6096522 (Ariz. Ct. App. Nov. 19, 2013).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Juror: Hispanic Female	<i>Batson</i> challenge unsuccessful. Court of Appeals held that, because the defendant failed to raise a comparative juror claim at trial and his challenge was that other non-Hispanic jurors were not struck for similar concerns, his basis for a <i>Batson</i> challenge fails.	Stated reasons: (i) juror’s “lack of information given to the court;” and (ii) juror raised “concerns for own ability to [understand English] ... and [that she] speaks mostly Spanish at work.”

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
52.	<i>State v. Binkley</i> , No. 1 CA–CR 12–0429, 2013 WL 5638181 (Ariz. Ct. App. Oct. 15, 2013).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Jurors: Six Male Jurors	<i>Batson</i> challenge unsuccessful. Stated reasons held gender-neutral and not pretextual. Also, <i>Batson</i> challenge was untimely.	Stated reasons: (i) Juror No. 7, because he was an artist (occupation); (ii) Juror No. 27, because he was a substitute teacher and retired executive (occupation);(iii) Juror No. 5, because he had a conflicting appointment; (iv) Juror No. 22, because he had previously acquitted a defendant as part of a jury and had a sibling involved in the criminal justice system; and (v) Juror No. 18, because he did not disclose a prior conviction during voir dire, had no children, and was young (age and lack of children); (vi) Juror No. 16 - He read a newspaper about the proceedings prior to trial.
53.	<i>State v. Young</i> , No. 1 CA–CR 12–0455, 2013 WL 4828246 (Ariz. Ct. App. Sept. 10, 2013).	State of Arizona (P)	Batson Challenge made by: Black Male Defendant Challenged Juror: Black Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) demeanor (not paying attention, looked like he didn’t really care, and no eye contact, rolled his eyes); (ii) offered “very little information” and “seemed not to have an answer for the court’s follow-up inquiry about his employment;” and (iii) juror had not attended college.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
54.	<i>State v. Medina</i> , 232 Ariz. 391, 306 P.3d 48 (S. Ct. 2013)	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Juror: Three “Minority” Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual. The Court ruled that comparative analysis based on a cold appellate record would be difficult, and the untimely argument meant the prosecution never had opportunity to distinguish between empaneled and stricken jurors.	Stated reasons: (i) for one juror, that she was young, lacked life experience, held low-level positions, her aunt has been investigated and cleared by Child Protective Services, her friends used marijuana, she would be upset by crime scene photos, and she was opposed to the death penalty; (ii) for a second juror, her uncle was a doctor of psychology; the prosecution expected testimony related to the defendant’s depression; and was worried the juror could not separate her involved life experiences; (iii) for a third juror, based on her youth, high school education, her belief that her friends had been punished too harshly for crimes, her friendship with gang members and drug users, her initial reluctance to accept prior jury’s verdict, and her opposition to death penalty.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
55.	<i>State v. Boddy</i> , No. 1 CA–CR 12–0461, 2013 WL 4398968 (Ariz. Ct. App. Aug. 13, 2013)	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Jurors: 1 Black and 3 Hispanic Jurors	<i>Batson</i> challenge unsuccessful. The court noted that the presence of other empaneled minority jurors and the prosecution not using all its peremptory strikes on minorities weighed in favor of no finding of purposeful discrimination.	Stated reasons: (i) one juror was a teacher; (ii) the second had sat as a grand juror, loved criminal science dramas, and had served as a Marine; (iii) the third was a friend of a victim/witness advocate and a teacher; (iv) the fourth wore a t-shirt to court, sat “hunched over in his chair and slouched down,” had not listened to the voir dire questions, and was a student.”
56.	<i>State v. Eck</i> , No. 2 CA–CR 2012–0311, 2013 WL 3326815 (Ariz. Ct. App. Jun. 27, 2013)	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant, but included note that his girlfriend was a black female and present during crime Challenged Juror: Black Male	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reason was race-neutral and not pretextual.	Stated reason: Juror had “voted not guilty on a previous assault case.”

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
57.	<i>State v. Rivera</i> , No. 1 CA–CR 11–0760, 2013 WL 2456562 (Ariz. Ct. App. Jun. 4, 2013)	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Juror: Black Female	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reason was race-neutral and not pretextual.	Stated reason: Juror had served on previous hung jury and was stricken “to be on the safe side.”
58.	<i>State v. Hernandez</i> , No. 2 CA–CR 2012–0104, 2013 WL 1776709 (Ariz. Ct. App. Apr. 24, 2013)	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Juror: Black Female	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) juror’s questionnaire was only half filled out; and (ii) juror seemed confused.
59.	<i>State v. Palafox</i> , No. 2 CA–CR 2012–0101, 2013 WL 709624 (Ariz. Ct. App. Feb. 26, 2013)	State of Arizona (P)	Batson Challenge made by: Native American and Hispanic Race Male Defendant Challenged Juror: Hispanic male, Middle Eastern or African Male, and Minority Female (with Hispanic name)	<i>Batson</i> challenge unsuccessful. The court relied on the trial court’s “independent evaluation of jurors’ demeanors... absent specific findings on the record.”	Stated reasons: (i) juror two was convicted of a DUI; (ii) juror eleven “he seemed ... sort of to be above all of this [,] ... a little bit nonchalant ... [and] the kind of person who might ... think this amount of drugs would be very trivial”; and (iii) juror fourteen because “she seemed not that interested compared to the other jurors.”

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
60.	<i>State v. Smiley</i> , No. 2 CA-CR 2011-0366, 2012 WL 5506987 (Ariz. Ct. App. Nov. 14, 2012)	State of Arizona (P)	Batson Challenge made by: Black Male Defendant Challenged Juror: Black Female	<i>Batson</i> challenge unsuccessful. The Court of Appeals refused to second guess the trial court's credibility assessment absent anything on the record.	Stated reasons: "[T]he prosecutor stated: 'The reason I struck her is that when asked if anyone required more than one witness or had a certain number of witnesses in mind that they would need to find proof beyond a reasonable doubt, [Juror 11] raised her hand.'"
61.	<i>State v. Worley</i> , No. 2 CA-CR 2010-0299, 2011 WL 4000829 (Ariz. Ct. App. Aug. 31, 2011)	State of Arizona (P)	Batson Challenge made by: Black Male Defendant Challenged Juror: Black Male	<i>Batson</i> challenge unsuccessful. The trial court was in the best position to make these decisions and nothing in the record reflected anything contradictory to the trial court's decision.	Stated reasons: Juror gave a response that was "a non sequitur [and] totally nonsensical" and therefore suggested the juror was "trying to pull "the prosecution's" leg or he...lacks the intelligence."
62.	<i>State v. Butler</i> , 230 Ariz. 465, 286 P.3d 1074 (Ct. App. 2012)	State of Arizona (P)	Batson Challenge made by: Black Male Defendant Challenged Juror: Two Black Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) concern that one juror was a residential drug counselor and would express sympathy in a case involving drug charges; (ii) a second black juror was stricken because "her reactions to [the] questions, whether they were good or bad questions, ... clearly ... showed discontent and disapproval of the manner in which [the prosecutor] was asking questions."

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
63.	<i>State v. Hardy</i> , 230 Ariz. 281, 283 P.3d 12 (Ariz. 2012).	State of Arizona (P)	Batson Challenge made by: Black Male Defendant Challenged Juror: Two “Minority” Juror	<i>Batson</i> challenge unsuccessful. Noting that three minority jurors remained on the panel and the defense struck five minority jurors to the prosecution’s two strikes, the Arizona Supreme Court determined the trial court did not err.	Stated reasons: (i) one juror stricken based on her predisposition to a life sentence and her brother’s drug addiction could make her sympathetic to the defendant’s mitigation related to familial drug abuse; and (ii) second juror stricken based on opposition to the death penalty and that she cringed at the phrase “an eye for an eye.”
64.	<i>State v. Butler</i> , No. 1 CA–CR 11–0622, 2012 WL 3525326 (Ariz. Ct. App. Aug. 16, 2012).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Juror: Black Female	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual.	Stated reasons: “Various family members” of the juror had been arrested, charged, or convicted of a crime.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
65.	<i>State v. Reyes-Valenzuela</i> , No. 2 CA–CR 2011–0313, 2012 WL 3276982 (Ariz. Ct. App. Aug. 13, 2012).	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Jurors: Black Male and Native American Female	<i>Batson</i> challenge unsuccessful. The court noted that of all the reasons given for striking the jurors, only employment distinguished these jurors from non-minority jurors. But the Court of Appeals reasoned that employment status has a basis in accepted trial strategy.	Stated reasons: (i) As to the African-American juror: “He is unemployed. I just don't have very much information. He doesn't read the newspaper, never been on a jury before. He has no bumper stickers. I had more information on other people I felt would serve my case a little bit better;” (ii) as to the Native American juror: “She is employed by WIC, Women, Infants and Children, sort of a helping type of vocation. Just get a little bit inside my head, I tend not to use those types of jurors that tend to be in helping professions. In addition, she had prior jury service in which she found someone not guilty. I tend to be a little bit superstitious and I look at those jurors a little bit more critically, and she did have a prior not guilty.”

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
66.	<i>State v. Clemens</i> , No. 1 CA–CR 10–0417, 2012 WL 2002757 (Ariz. Ct. App. Jun. 5, 2012).	State of Arizona (P)	Batson Challenge made by: Hispanic Female Defendant Challenged Juror: Three Hispanic Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual. The court buttressed its reasoning by noting that the defendant struck two other Hispanic jurors.	Stated reasons: (i) one juror was illiterate and professed animosity toward police; (ii) one juror was struck because his English was “very poor” and he didn’t raise his hand during any voir dire questions which gave rise to a possible “compromised understanding of English;” (iii) one juror was struck because they had a close relative accused of forgery (the crime of which the defendant was charged).
67.	<i>State v. James</i> , No. 1 CA–CR 10–0830, 2012 WL 1795185 (Ariz. Ct. App. May 17, 2012).	State of Arizona (P)	Batson Challenge made by: Unknown Male Defendant Challenged Juror: Black Female Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual.	Stated reasons: Juror “identified herself as ‘a very strong advocate of being innocent until proven guilty’ and described an incident when she acted in accordance with her conviction.”
68.	<i>State v. Garibay</i> , No. 1 CACR 10–0781, 2012 WL 1795163 (Ariz. Ct. App. May 17, 2012).	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Juror: Hispanic Juror	<i>Batson</i> challenge unsuccessful. The court found that striking sixty percent of the Hispanic jurors in and of itself was not enough to suggest discriminatory purpose.	The reasons for the strikes are not mentioned. The court notes that Hispanic jurors remained on the jury, the prosecution’s voir dire didn’t suggest anything discriminatory, and the victim was Hispanic.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
69.	<i>State v. Valenzuela</i> , No. 1 CA–CR 11–0066, 2012 WL 1138985 (Ariz. Ct. App. Apr. 3, 2012).	State of Arizona (P)	Batson Challenge made by: Unknown Male Defendant Challenged Juror: Hispanic Juror	Case remanded to trial court for further <i>Batson</i> findings.	
70.	<i>State v. Bustamante</i> , 229 Ariz. 256, 274 P.3d 526 (Ct. App. 2012).	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Juror: Hispanic Female	<i>Batson</i> challenge unsuccessful. Stated reason held race-neutral.	Stated reason: Juror “had some language issues” and “she is a teacher...and she works with children.”
71.	<i>State v. Gonzalez</i> , No. 2 CA–CR 2011–0174, 2012 WL 245892 (Ariz. Ct. App. Jan. 26, 2012).	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Jurors: Four Hispanic Jurors	<i>Batson</i> challenge unsuccessful. The defendant never argued why the prosecutor’s reasons were pretextual, so the court found the defendant did not carry his burden of proof on inference alone.	Stated reasons for striking the four jurors: (i) the first had family members involved with the criminal justice system; (ii) the second read gossip magazine, (iii) the third referenced aliens UFOs, and his dog told him to call 9-1-1, and (iv) the fourth was a teacher and there was concern about her language ability. The State did not strike three other Hispanic jurors.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
72.	<i>State v. Sermenio</i> , No. 1 CA–CR 10–0286, 2011 WL 5167630 (Ariz. Ct. App. Nov. 1, 2011).	State of Arizona (P)	Batson Challenge made by: Hispanic Female Defendant Challenged Juror: Hispanic Female	<i>Batson</i> challenge unsuccessful. Court of Appeals noted that, from the record, the juror did have trouble speaking English. And since no comparative analysis was asked for at trial, there was no clear error from the trial judge not <i>sua sponte</i> engaging in such analysis.	Stated reasons: (i) juror had “difficulty speaking English;” (ii) lack of schooling and fact that “she is employed as a Wal-Mart cake decorator.” The prosecutor expressed concern that fluency in English and education were important because the jury instructions and trial would be complicated.
73.	<i>State v. Lee</i> , No. 1 CA–CR 09–0790, 2011 WL 4100455 (Ariz. Ct. App. Sept. 15, 2011).	State of Arizona (P)	Batson Challenge made by: Black Male Defendant Challenged Juror: Black Female	<i>Batson</i> challenge unsuccessful. The Court of Appeals agreed with the lower court that two of the three reasons for the strike (lack of education based on a response to a voir dire question and lack of investment in the community based on familial relations) were not valid. But they did agree with the trial court that not the juror not recalling a recent trial of which she was a juror was a valid reason.	Stated reasons: (i) juror was “not invested in the community because she was not married, had no children, and was very young;” (ii) juror’s. Additionally, the prosecutor struck the juror because she “was uneducated, and could not remember any details of a trial on which she has served as a juror only two years before.”

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
74.	<i>State v. Whitehead</i> , No. 2 CA–CR 2009–0110, 2011 WL 4014407 (Ariz. Ct. App. Sept. 8, 2011).	State of Arizona (P)	Batson Challenge made by: Black Male Defendant Challenged Juror: African-American female wearing a shirt that read “Christ for Life”	<i>Batson</i> challenge unsuccessful. Court of Appeals noted that there were several permissible race-neutral reasons for the strike. Further, there was no <i>Batson</i> challenge based on religion preserved for appeal, and even if there had been the strike was permissible because wearing a controversial shirt was the basis, not necessarily the religion.	Stated reasons: (i) juror “worked with juvenile criminal offenders in their ‘last chance’ before incarceration,” and therefore might have sympathy for the defendant as a social worker; (ii) juror’s brother was in prison; (iii) juror had an unprosecuted rape in her background; and (iv) juror wore a “shirt which read ‘Christ for Life’ [which] seemed confrontational especially in light of her staring at the prosecutor frequently.”
75.	<i>State v. Acosta-Garcia</i> , No. 2 CA–CR 2010–0342, 2011 WL 2695785 (Ariz. Ct. App. Jul. 12, 2011).	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Juror: Minority Juror	<i>Batson</i> challenge unsuccessful. The challenge rested on the evaluation of the juror’s demeanor, and there was little evidence on the record about such demeanor. So, the Court of Appeals deferred to the trial court and found no clear error in the trial court deeming it not pretextual.	Stated reasons: During the swearing in of the panel, the juror “actually looked down and his lips barely moved” and “he didn’t have any input on any other questions except” those required of everyone. The prosecutor mentioned that the juror “may have a hard time actually being engaged in the process.”

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
76.	<i>State v. Martinez</i> , No. 2 CA–CR 2010–0149, 2011 WL 2694833 (Ariz. Ct. App. Jun. 7, 2011).	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Juror: Two Hispanic Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court’s determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) one juror “had been present on several occasions when ‘friends and neighbors [were] arrested;’” and (ii) second juror had previously served as a juror in a civil trial. When asked what the verdict was, the juror responded, “not guilty.” The prosecutor explained that this language left them “concerned about [her] past.”
77.	<i>State v. Soto</i> , No. 2 CA–CR 2008–0405, 2011 WL 1733531 (Ariz. Ct. App. May 5, 2011)	State of Arizona (P)	Batson Challenge made by: Hispanic male Challenged Jurors: Two Hispanic Jurors	<i>Batson</i> challenge unsuccessful. Court of Appeals found that the trial court did not need to make specific findings as to why the demeanor of the juror provided a race-neutral reason for a strike.	Stated reasons: (i) prosecutor referenced one juror as “a slob, sleeps all day, and he takes tickets for a couple of hours at the movie theatre.” On appeal, the Defendant only appealed the trial court’s ruling as to the first juror. Therefore, no reason was given in the decision for why the second juror was stricken.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
78.	<i>State v. Carrasco</i> , No. 2 CA–CR 2010–0280, 2011 WL 1535513 (Ariz. Ct. App. Apr. 20, 2011)	State of Arizona (P)	Batson Challenge made by: Hispanic male Challenged Juror: Black Juror	<i>Batson</i> challenge unsuccessful. The court noted that the defendant did not meet the burden of showing prima facie discrimination, noting that the defendant and the juror were different races and another Black juror was seated.	The prosecutor did not give a reason stating, “I don’t have any real reason that I could articulate.”
79.	<i>State v. Giles</i> , No. 2 CA–CR 2010–0059, 2011 WL 1529961 (Ariz. Ct. App. Apr. 19, 2011)	State of Arizona (P)	Batson Challenge made by: Unknown Race Female Challenged Juror: Black Female	<i>Batson</i> challenge unsuccessful. Stated reason held race-neutral.	Stated reasons: Several inaccuracies in the biographical data form completed by the juror that suggested a “lack of attention to detail.”
80.	<i>State v. Angulo</i> , No. 1 CA–CR 09–0971, 2011 WL 1326052 (Ariz. Ct. App. Apr. 7, 2011)	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Juror: Hispanic Male	<i>Batson</i> challenge unsuccessful. Court of Appeals agrees with trial court that defendant failed to make a prima facie showing purposeful discrimination (step one of <i>Batson</i>).	The appellate decision doesn’t detail the reasons as the defendant never made a prima facie showing of purposeful discrimination and therefore the reasons were not necessary.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
81.	<i>State v. Benally</i> , No. 1 CA-CR 10-0101, 2011 WL 743076 (Ariz. Ct. App. Mar. 3, 2011)	State of Arizona (P)	Batson Challenge made by: Native American Male Challenged Juror: Native American Female	<i>Batson</i> challenge unsuccessful. Court of Appeals gave deference to the trial court in its ability to judge the prosecutor's credibility and the defendant did not directly address the explanations proffered.	Stated reasons: (i) juror in question was beyond a certain age and was not married and had no children; (ii) the victim and the victim's mother were Native American, weighing against a conclusion of purposeful discrimination.
82.	<i>State v. Gay</i> , No. 2 CA-CR 2010-0355-PR, 2011 WL 765881 (Ariz. Ct. App. Mar. 3, 2011)	State of Arizona (P)	Batson Challenge made by: Black Male Defendant Challenged Jurors: Two Black Female Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) one of the stricken jurors was not happy with the way the police handled the investigation of her nephew's murder, and seemed "stern looking" and "angry" with "kind of a glare," and did not make eye contact with the prosecutor; (ii) second juror stated that she disliked the death penalty, "had problems with graphic details and gruesome photos," was sympathetic to the drug use question, and would be distracted by upcoming medical tests.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
83.	<i>State v. Muniz</i> , No. 2 CA-CR 2009-0289, 2011 WL 96320 (Ariz. Ct. App. Jan. 6, 2011)	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Juror: Three Hispanic Jurors (one female and two males)	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) one female juror stared at the prosecutor "intensely" and could not "remain focused and follow what [they were] saying," (ii) another juror was "completely confused and exhibited bizarre behavior throughout [his] questioning," and (iii) one juror appeared to have "an attitude" and was not "a sincere, nurturing type of father."
84.	<i>State v. Guzman</i> , No. 1 CA-CR 09-0753, 2010 WL 5018138 (Ariz. Ct. App. Dec. 7, 2010)	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Juror: Black Female	<i>Batson</i> challenge unsuccessful. Because the defendant did not challenge the prosecution not proffering a race-neutral reason at trial, the court of appeals only review for fundamental error - finding none.	No reason stated in the opinion.
85.	<i>State v. Gallardo</i> , 225 Ariz. 560, 242 P.3d 159 (Ariz. 2010)	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Jurors: Three Minority Jurors (Two Females and One Unknown Gender)	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons for striking 3 jurors: (i) hardship; (ii) negative feelings toward police; and (iii) criminal history.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
86.	<i>State v. Martinez</i> , No. 1 CA-CR 08-0924, 2010 WL 3366407 (Ariz. Ct. App. Aug. 26, 2010)	State of Arizona (P)	Batson Challenged made by: Hispanic Male Defendant Challenged Juror: Hispanic Male	<i>Batson</i> challenge unsuccessful. Determining whether the prosecutor's proffered reason for dismissing the juror was race-neutral is a determination of credibility - of which the trial court is better suited.	Stated reason: Juror did not have a high school degree and did not use proper English.
87.	<i>State v. Garcia</i> , No. 2 CA-CR 2009-0278, 2010 WL 3169411 (Ariz. Ct. App. Aug. 11, 2010)	State of Arizona (P)	Batson Challenged made by: Hispanic Defendant Challenged Jurors: 3 Hispanics	<i>Batson</i> challenge unsuccessful. Supreme Court found that the superior court did not err in denying the challenge. Garcia's failure to timely raise the challenge made it impossible for the appellate court to review the race of remaining jurors to determine pretext.	Stated reasons: (i) on juror's husband was recently released from prison for a class four felony; (ii) one juror "had multiple relatives" who had served time in prison, "including one for murder;" and (iii) one juror was not being honest in describing his neighborhood which the state noted was gang oriented.
88.	<i>State v. Corral</i> , No. 2 CA-CR 2009-0261, 2010 WL 2978053 (Ariz. Ct. App. Jul. 29, 2010)	State of Arizona (P)	Batson Challenge made by: Hispanic Defendant Challenged Juror: Hispanic	<i>Batson</i> challenge unsuccessful. Stated reason held race-neutral.	Stated reason: Juror was slow to answer during voir dire.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
89.	<i>State v. Torres</i> , No. 2 CA-CR 2009-0131, 2010 WL 2477865 (Ariz. Ct. App. Jun. 18, 2010)	State of Arizona (P)	Batson Challenge made by: Hispanic Defendant Jurors Challenged: Black male	<i>Batson</i> challenge unsuccessful. Other jurors who had teaching experience who were not excluded had characteristics a prosecutor may find friendly and thus there was no pre-textual discrimination in only Black teacher being excluded. Friendly characteristics of other jurors with teaching experience included: relationship to law enforcement, military experience.	Stated reasons: Only Black juror was stricken because he was a teacher and “it's conventional wisdom among prosecutors that teachers don't make the best jurors for the prosecution.”
90.	<i>State v. Cruz-Saucedo</i> , 2010 WL 2476184 (Ct. App. Jun. 17, 2010)	State of Arizona (P)	Batson Challenge made by: Hispanic Defendant Challenged Juror: Only remaining Hispanic in venire	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: Juror “had family members who had been convicted and arrested for crimes involving drugs and ... who ... [had] committed suicide ... [as] a result of drugs and drug use.”

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
91.	<i>State v. Christian</i> , No. 2 CA–CR 2009–0061, 2010 WL 1241096 (Ariz. Ct. App. Mar. 31, 2010)	State of Arizona (P)	Batson Challenge made by: White Male Defendant Challenged Jurors: White Males	Case remanded to trial court for further <i>Batson</i> findings. The Court of Appeals remanded to the trial court with directions to conduct a hearing to determine whether the prosecutor's three remaining peremptory strikes were motivated by a discriminatory intent.	Stated reasons: None provided.
92.	<i>State v. Garcia</i> , 224 Ariz. 1, 226 P.3d 370 (2010)	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Juror: Hispanic Female	<i>Batson</i> challenge unsuccessful. Supreme Court stated it would not second-guess trial court's determination that strike was race-neutral, when at least one juror with a Hispanic surname was chosen.	Stated reasons: (i) lack of a high school education; (ii) juror had been at current job for only a year, indicating a lack of community stability; and (ii) juror had problems understanding English.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
93.	<i>State v. Davis</i> , No. 1 CA-CR 08-0608, 2010 WL 199687 (Ariz. Ct. App. Jan. 21, 2010)	State of Arizona (P)	Batson Challenge made by: Black Male Defendant Challenged Jurors: Two Black Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) Juror 33 had a sibling who was incarcerated, offered inconsistent statements about impartiality; prosecutor perceived him to be unsympathetic to the state; and (ii) Juror 44 had prior arrest for domestic violence and "smirked" when she answered yes about being impartial.
94.	<i>State v. Salomon</i> , No. 2 CA-CR 2008-0310, 2009 WL 4613718 (Ariz. Ct. App. Dec. 7, 2009)	State of Arizona (P)	Batson Challenge made by: Black Defendant Challenged jurors: Four Minorities (One Female and Three Males)	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) Juror H described herself as a "conspiracy theorist" and "devil's advocate" which made the prosecutor see her as an "intellectual... a leader who may think she knows a ... lot;"" (ii) Juror L wore ponytail and dark sunglasses and overstated military service; (iii) Juror A was slow in his responses, and fraternized with Juror L in the hallway making prosecutor concerned he was "a follower type"; (iv) Juror J had a nephew who was a repeat offender, "was a follower," and seemed inattentive.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
95.	<i>State v. Crawford</i> , 2009 WL 3353490 (Ariz. Ct. App. Oct. 19, 2009)	State of Arizona (P)	Batson Party made by: Unknown Race Defendant Challenged Juror: Hispanic Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) Juror was young and inexperienced; and (ii) juror watched certain television shows that evidence a lack of "maturity and understanding of worldliness that's important in this particular case."
96.	<i>State v. Martinez</i> , No. 1 CA-CR 08-0144, 2009 WL 3165489 (Ariz. Ct. App. Oct. 1, 2009)	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Juror: One Female Hispanic Juror and one Male Hispanic Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) Juror 30 was pregnant and unmarried; (ii) Juror 31 was an engineer; the State did not learn much about Juror 31 from his answers; his voice was short, impatient and seemed staccato; and all prosecutors fear engineers as being very nitpicky and detail oriented.
97.	<i>State v. Carey</i> , No. 1 CA-CR 08-0663, 2009 WL 2951105 (Ariz. Ct. App. Sept. 15, 2009)	Defendant	Batson Challenge made by: Unknown Race Defendant Challenged Juror: Minority	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: Juror admitted that she had "limited language skills to fully participate in the trial" and that she did not understand what the judge was saying.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
98.	<i>State v. Francis</i> , 2010 WL 1636047 (Ct. App. Apr. 22, 2010)	Defendant	Batson Challenge made by: Unknown race Male Defendant Challenged Jurors: Two Black Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) one juror failed to make eye contact; (ii) other juror was employed as a drug counselor and may "express sympathy" or "look to inner motivations" in jury deliberations.
99.	<i>State v. Holmes</i> , No. 1 CA-CR 08-0541, 2009 WL 2253156 (Ariz. Ct. App. Jul. 28, 2009)	Defendant	Batson Challenge made by: Black Male Defendant Challenged Juror: Black juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) juror expressed the view that marijuana should be legalized; and (ii) was a small business owner who may be more focused on being away from business than trial.
100.	<i>State v. Padilla</i> , 2009 WL 1879720 (Ariz. Ct. App. Jun. 30, 2009)	Defendant	Batson Challenge made by: Hispanic Male Defendant Challenged Juror: Female Hispanic Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) juror worked at St. Mary's food bank; and (ii) with inmates. The prosecutor preferred jurors to have no experience with the criminal justice system.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
101.	<i>State v. Bunn</i> , No. 1 CA-CR 08-0644, 2009 WL 1710275 (Ariz. Ct. App. Jun 18, 2009)	Defendant	Batson Challenge made by: Black Defendant Challenged Jurors: Two Black Jurors and One Minority Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) Juror 10 did not speak English and was excused after asking to be excused; and (ii) one juror was excused by the court for hardship. Challenge to third juror was dismissed out of hand and no reason was provided for strike.
102.	<i>State v. Ortega</i> , No. 1 CA-CR 08-0155, 2009 WL 1350100 (Ariz. Ct. App. May 14, 2009).	State of Arizona (P)	Batson Challenge made by: Black Male Defendant Challenged Jurors: One Black Juror and One Hispanic Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that the defendant failed to establish a prima facie case of discrimination.	Stated reasons: None provided because prosecutor argued that defendant failed to make a prima facie case of discriminatory purpose "simply because ... there also still remains two black persons on the jury."
103.	<i>State v. Aguilar</i> , No. 1 CA-CR 06-0035, 2009 WL 690598 (Ariz. Ct. App. Mar. 17, 2009)	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Jurors: Two Hispanic jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) age (19 and 21 years old); (ii) both jurors were single; (iii) neither drank; and (iv) both were anti-death penalty.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
104.	<i>State v. Cruz</i> , 2009 WL 551119 (Ct. App. Mar. 5, 2009)	State of Arizona (P)	Batson Challenge made by: Challenged Jurors: Three Mexican-American Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) one juror had a previous DUI; (ii) another juror had an aunt who had been hit by a drunk driver. Defense counsel withdrew the <i>Batson</i> challenge as to the third juror.
105.	<i>State v. Ponder</i> , No. 1 CA-CR 07-0274, 2009 WL 491585 (Ariz. Ct. App. Feb. 26, 2009)	State of Arizona (P)	Batson Challenge made by: Black Male Defendant Challenged Jurors: One Hispanic and One Middle Eastern	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: Based on demeanor of the two jurors, which appeared to be disinterested and soft spoken.
106.	<i>State v. Reyes</i> , No. 1 CA-CR 07-0816, 2009 WL 8307 (Ariz. Ct. App. Jan. 2, 2009)	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Juror: Hispanic	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: Juror's father had been a car thief prior to becoming a police officer. Instant case was for car theft and Prosecutor thought Juror might be sympathetic based on father's history.
107.	<i>State v. Logue</i> , No. 1 CA-CR 07-0748, 2008 WL 4965303 (Ariz. Ct. App. Nov. 18, 2008)	State of Arizona (P)	Batson Challenge made by: White Male Defendant Challenged Juror: Black	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) juror appeared to be disinterested; and (ii) lack of information on challenged juror.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
108.	<i>State v. Vasquez</i> , No. 2 CA-CR 2007-0363, 2008 WL 4767191 (Ariz. Ct. App. Oct. 31, 2008)	State of Arizona (P)	Batson challenge made by: Hispanic Male Challenged jurors: Three Hispanics	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) one juror stricken for lack of eye contact, apparent disinterest, a family member had a DUI, and marriage to a nurse; (ii) another juror stricken for being too quiet; (iii) one juror stricken for being too quiet, lacking eye contact, and employment as a UPS driver which may be associated with an increased likelihood of driving under the influence.
109.	<i>State v. Garcia</i> , No. 2 CA-CR 2007-0293, 2008 WL 4294854 (Ariz. Ct. App. Sept. 19, 2008)	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Jurors: Three Unspecified Minority Jurors (referred to as jurors of color)	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	No explanation was provided in opinion.
110.	<i>State v. Vasquez-Mendoza</i> , No. 1 CA-CR 06-0983, 2008 WL 3007988 (Ct. App. Jul. 31, 2008).	State of Arizona (P)	Batson Challenge made by: Hispanic Defendant Challenged Jurors: Two Hispanics	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) one juror stricken based on unstable work history, criminal history, and long-term drug use and recent sobriety; (ii) second juror stricken based on lack of work history, lack of post-secondary education, and prior jury service experience.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
111.	<i>State v. Brown</i> , No. 1 CA-CR 07-0090, 2008 WL 2875799 (Ariz. Ct. App. Jul. 22, 2008).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Jurors: Black Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reason: Juror stated he would not find defendant guilty without DNA or fingerprint analysis.
112.	<i>State v. Hayden</i> , No. 1 CA-CR 07-0119, 2008 WL 2838538 (Ariz. Ct. App. Jul. 17, 2008).	Defendant	Batson challenge made by: Unknown Race Male Defendant Challenged jurors: Two Hispanic Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) one juror was struck for being employed as an artist; and (ii) second juror was struck for expressing belief regarding differential treatment in criminal justice system.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
113.	<i>State v. Martinez</i> , No. 1 CA-CR 06-0936, 2008 WL 2447441 (Ariz. Ct. App. Jun. 12, 2008).	State of Arizona (P)	Batson Challenge made by: Hispanic male Defendant Challenged Jurors: Three Hispanic jurors.	<i>Batson</i> challenge unsuccessful. Note: In this case the trial court upheld a <i>Batson</i> objection, reseating two stricken jurors to the panel, and then seating the first nine jurors. The court of appeals upheld the trial court's remedy of reinstating the two stricken jurors and held no error.	This case does not address the stated reasons for the <i>Batson</i> challenge, which was upheld by the trial court as to two jurors. (The strike of the third juror was not challenged on appeal). After finding a <i>Batson</i> violation, the trial court reinstated the improperly stricken jurors to the prospective jury panel and placed them in their original numbered positions. The court then went down the prospective jury list and seated the first nine jurors on the list and excused the remaining two highest-numbered jurors. As a result, one of the improperly stricken jurors was seated, while the other was not.
114.	<i>State v. Powell</i> , No. 2 CA-CR 2006-0129, 2008 WL 4516418 (Ariz. Ct. App. May 19, 2008).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged jurors: Six Male Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were gender-neutral and not pretextual.	Stated reasons: (i) one juror was struck for not paying attention to prosecutor's questions; (ii) a second juror was struck because he watched immature television shows; (iii) a third was struck because he was young, single, and childless; (iv) fourth was struck because he had a DUI conviction; (v) fifth juror was struck because he did not drink alcohol; (vi) sixth was struck because prosecutor did not think he would be attentive during trial.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
115.	<i>State v. Montgomery</i> , No. 1 CA-CR 07-0324, 2008 WL 3892000 (Ariz. Ct. App. May 6, 2008).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Jurors: One Hispanic and two Asian jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) one juror did not make eye contact and appeared disinterested; (ii) another juror had been a crime victim and apparently felt that the perpetrators did not receive the appropriate punishment, resulting in "a hostile juror to the State;" and (iii) third juror was struck based upon the juror's belief that marijuana should be legal and that juror was disinterested.
116.	<i>State v. Adams</i> , No. 1 CA-CR 07-0467, 2008 WL 3892032 (Ariz. Ct. App. May 6, 2008)	State of Arizona (P)	Batson challenge made by: Unknown Race Defendant Challenged jurors: One Asian male, and one Black female	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) black female juror was struck because she worked as a Court appointed Special Advocate and may be sympathetic to Defendant; (ii) Asian male juror struck because he knew another juror on panel who was excused because a family member abused drugs; failed to disclose that he knew someone who abused drugs; and was not forthcoming.
117.	<i>State v. Garcia</i> , No. 1 CA-CR 06-0856, 2008 WL 3892115 (Ariz. Ct. App. May 6, 2008).	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Jurors: Three Hispanic Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) Juror 12 was struck because that individual had only a ninth-grade education and an apparent language difficulty; (ii) Jurors 19 and 26 had relatives in prison for crimes similar to Defendant's charges.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
118.	<i>State v Fulbright</i> , No. 1 CA-CR 06-0709, 2008 WL 3876424 (Ariz. Ct. App. Apr. 10, 2008)	State of Arizona (P)	Batson challenge made by: Unknown Race Male Defendant Challenged Juror: Black Juror	<i>Batson</i> challenge unsuccessful. Appellate court concluded that Defendant had failed to make a prima facie case of discrimination and that the prosecutor's race-neutral explanation was reasonable.	Stated reason: (i) juror was struck because he worked for the Department of Economic Security (DES). The prosecutor struck the juror in question as well as another DES employee.
119.	<i>State v. Mejia</i> , No. 2 CA-CR 2007-0140 2008, WL 4568078 (Ariz. Ct. App. Mar. 20, 2008).	State of Arizona (P)	Batson Challenge made by: Hispanic Male defendant Challenged juror: Black Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reason was that juror was "was a social worker and she belonged to an organization (National Association of Social Workers) that... does not support the police department."
120.	<i>State v. Saucedo</i> , No. 2 CA-CR 2005-0334, 2008 WL 4516410 (Ariz. Ct. App. Mar. 14, 2008)	State of Arizona (P)	Batson Challenge made by: Hispanic male Defendant Challenged Juror: Hispanic	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reason was race-neutral and not pretextual. Court also noted that the final jury included two people with Hispanic surnames.	Stated reason was that the juror was young like the defendant. (Defendant argued that the explanation was pretextual because it applied equally to a woman and non-Hispanic man, neither of whom the state struck).

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
121.	<i>State v. Herndon</i> , No. 1 CA-CR 06-0963, 2008 WL 2641303 (Ariz. Ct. App. Jan. 22, 2008).	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Juror: One Hispanic Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual. In addition, Defendant waived argument regarding lack of English fluency by not raising it at trial.	Stated reason: Lack of stability as juror just moved to Arizona two years ago and was unmarried with no children. Also, juror stated he was currently learning English.
122.	<i>State v. Benich</i> , No. 1 CA-CR 06-0901, 2008 WL 2641309 (Ariz. Ct. App. Jan. 10, 2008).	State of Arizona (P)	Batson Challenge made by: Unknown Race Defendant Challenged Jurors: One Black Juror and two Hispanic Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) one juror was struck over an arrest record; (ii) second juror struck for alleged lack of English fluency; and (iii) black juror who was twenty-sixth of the remaining jurors, so was no longer eligible when the prosecutor declined to use one of his peremptory challenges.
123.	<i>State v. Soto</i> , No. 1 CA-CR 06-0761, 2007 WL 5209467 (Ariz. Ct. App. Sept. 25, 2007).	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Jurors: One Hispanic female and two Black Females	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) Juror 9 was the victim of domestic violence, which was allegedly what instigated the shooting in the case; (ii) Juror 12 was "overly emotional" and "did not want to be here;" and (iii) Juror 17 stated she could not believe a snitch.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
124.	<i>Felder v. Physiotherapy Associates</i> , 215 Ariz. 154, 158 P.3d 877 (Ct. App. 2007)	Plaintiff	Batson Challenge made by: Unknown Race Male Plaintiff Challenged Jurors: Hispanic female	<i>Batson</i> challenge was successful. Appellate court upheld trial court's determination that the striking party failed to offer a race-neutral reason for the strike of a Hispanic juror, who was reinstated to the jury. (Striking of two other black jurors was not challenged on appeal).	Stated reason: The stricken Hispanic juror had a friend who was injured and prevented from playing sports during school and there was concern the juror would be influenced by that experience.
125.	<i>State v. Gay</i> , 214 Ariz. 214, 150 P.3d 787 (Ct. App. 2007).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Jurors: Two Black Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) one prospective juror had a negative attitude toward law enforcement; (ii) other juror disliked the death penalty.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
126.	<i>State v. Roque</i> , 213 Ariz. 193, 141 P. 3d 368 (2006).	State of Arizona (P)	Batson Challenge made by: Unknown Race Defendant Challenged Juror: Black Juror	<i>Batson</i> challenge unsuccessful. Appellate court held that venire member's statements regarding personal problems with police officers that he attributed to racial motivation and statements expressing his belief that death penalty was imposed more frequently on members of minority groups provided valid reasons for prosecutor to question potential juror's impartiality, and prosecutor did not strike all black jurors from panel.	State argued that juror was struck for having negative views of law enforcement.
127.	<i>State v. Newell</i> , 212 Ariz. 389, 132 P.3d 833 (2006)	State of Arizona (P)	Batson Challenge made by: Unknown Race Defendant Challenged Juror: Black Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	State offered that the reason for striking juror was her contradictory responses about whether she could vote for death penalty.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
128.	<i>State v. Darnell</i> , 209 Ariz. 182, 98 P.3d 617 (Ct. App. 2004), review denied and ordered republished, 210 Ariz. 77, 107 P.3d 923 (2005)	Defendant	Batson Challenge made by: State Challenged Juror: Unknown Minority	<i>Batson</i> challenge was successful at the trial court level, but the appellate court did not reach the merits, finding the evidence “sparse” and that it supported “both parties’ interpretations of events.” The appellate court noted it was unclear whether the trial court decided that defense counsel's explanation was not race neutral because medical knowledge was “not that applicable to this case,” or that the explanation was race-neutral but a pretext for discrimination. But because any error in the court's ruling was harmless the strike was permissible.	Before the State could explain why it considered the strike discriminatory, defense counsel asserted that it was because juror had a medical degree and may unduly influence other jurors’ review of evidence.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
129.	<i>State v. Dewakuku</i> , 208 Ariz. 211, 92 P.3d 437 (Ct. App.), opinion ordered depublished, 209 Ariz. 338, 101 P.3d 214 (2004), and review granted, cause remanded, No. CR-04-0329-PR, 2005 WL 2414851 (Ariz. Sept. 27, 2005).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Juror: Five Male Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were gender-neutral and not pretextual.	Stated reasons: (i) Juror Number 4 was a civil engineer who had served as a juror before; (ii) Number 5 was a nurse whose brother had been charged but not convicted of assault; (iii) Number 9 was an artist with a sixth-grade education; (iv) Number 12 was a retired marketing representative; (v) Number 19 was a mechanic with a high school education whose wife was a preschool teacher and had siblings convicted of DUI.
130.	<i>State v. Prasertphong</i> , 206 Ariz. 70, 75 P.3d 675, supplemented, 206 Ariz. 167, 76 P.3d 438 (2003), and cert. granted, judgment vacated, 541 U.S. 1039, 124 S. Ct. 2165, 158 L. Ed. 2d 727 (2004).	State of Arizona (P)	Batson Challenge made by: Asian Male Defendant Challenged Juror: Asian Juror	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that strike based upon a juror's reluctance to serve is non-discriminatory.	Stated reason: Juror "clearly did not want to sit on this jury" and the prosecutor "didn't want somebody sitting here three weeks that didn't want to be here."

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
131.	<i>State v. Finch</i> , 202 Ariz. 410, 46 P.3d 421 (2002).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Juror: Two Religious Jurors	<i>Batson</i> challenge unsuccessful. The Court held that inability to perform with respect to death penalty was acceptable basis for exercising strike. Defendant did not show that other challenged jurors were excused for their religious affiliation.	One juror was struck for her death penalty views. Court notes that other jurors were struck for reasons unrelated to their religious views.
132.	<i>State v. Canez</i> , 202 Ariz. 133, 42 P.3d 564 (2002).	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Juror: Five Hispanic Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) one juror knew state's witness; (ii) another indicated she was a nurse but had no post-secondary education; (iii) another juror had criminal history and expressed dislike of death penalty; (iv) another juror had criminal history and held dim view of exchanging plea agreements for co-defendant testimony; (v) another juror's family harbored ill feelings toward prosecutor's office.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
133.	<i>State v. Paleo</i> , 200 Ariz. 42, 22 P.3d 35 (2001)	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Jurors: One Hispanic Juror	<i>Batson</i> challenge (based on waiver) unsuccessful. Defendant failed to present any evidence that the State waived peremptory strikes for a discriminatory purpose.	State's refusal to use one more of its peremptory strikes ended up removing the remaining Hispanic juror.
134.	<i>State v. Lucas</i> , 199 Ariz. 366, 18 P.3d 160 (Ct. App. 2001).	State of Arizona (P)	Batson Challenge made by: Black Male Defendant Challenged Jurors: Black Male Juror	Successful on basis of gender. The Court of Appeals held that prosecutor's peremptory strike of only Black male juror on jury panel violated Batson, because her reason was "an unacceptable anecdotal generalization without basis in fact".	Prosecutor struck black juror for being a lawyer and it was her practice to strike lawyers. She then added that it was her belief that southern men were prejudiced against women, particularly pregnant women. Prosecutor was pregnant at the time.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
135.	<i>State v. Purcell</i> , 199 Ariz. 319, 18 P.3d 113 (Ct. App. 2001).	State of Arizona (P)	<i>Batson</i> challenge made by: Unknown Race Male Defendant Challenged Juror: One Hispanic Catholic Woman	<i>Batson</i> challenge unsuccessful. Court agreed with cases extending <i>Batson</i> to encompass peremptory strikes based on religious membership or affiliation. In deference to trial court, the Court found that the record supported that prosecutor's reason for striking was her opposition to the death penalty and concerns about the pressures she'd feel from her employer, who also opposed the death penalty and thus her ability to apply the law impartially. Defendant argued that Juror had indicated her beliefs would not affect her ability to be fair and impartial. The Court found that the assurances provided were sufficient to withstand a challenge for cause, not they did not eliminate all legitimate concerns about her impartiality.	Prosecution struck the juror because of her work for Diocese and her Catholicism (Catholic's stance against death penalty) would pressure her too much to allow her to be "objective with regard to premeditated murder" if she felt that would make an option for defendant to be sentenced to death. Defense argued that the strike violated <i>Batson</i> based both on race and on religion. The Court reframed this as a strike based on the juror's "underlying opposition to capital punishment."

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
136.	<i>State v. Martinez</i> , 196 Ariz. 451, 999 P.2d 795 (2000).	State of Arizona (P)	Batson challenge made by: Hispanic Male Defendant Challenged Jurors: Black Male 'Pastor' and Black Female	<i>Batson</i> challenge unsuccessful. For Juror 1, Court found that the strike was not based on religion but based on Juror 1's strong opposition to the death penalty and for possibly having a conversation with the girlfriend of the defendant. Court found these reasons to also be race-neutral and legitimate. For Juror 2, the Court found the juror had provided clearly in her jury questionnaire that she opposed the death penalty and feelings about her brother's shooting. The Court found there were no similarly situated Caucasian jurors and thus found no error.	State provided three reasons for striking Juror 1: his opposition to the death penalty, his conversation with the defendant's girlfriend, and his possible sympathy towards defendant because of his occupation. For Juror 2, the State provided three reasons: 1) her opposition to the death penalty, 2) her strong opinions in general, and 3) possible residual feelings about her brother's shooting.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
137.	<i>State v. Eagle</i> , 196 Ariz. 27, 992 P.2d 1122 (Ct. App. 1998).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Juror: Hispanic Juror	<i>Batson</i> challenge unsuccessful. Prosecution did not need to offer an “objective verification statement” as to reason for using strike, it only needed to be “race-neutral.” Court found no error in trial court’s denial of <i>Batson</i> challenge.	Prosecution stated Hispanic juror “appeared young” compared to others and “extremely nervous” answering juror questionnaire.
138.	<i>State v. Trostle</i> , 191 Ariz. 4, 951 P.2d 869 (1997).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Jurors: Two Hispanic Jurors	Court ruled that State’s proffered race-neutral reasons were not “wholly subjective” but were facially objective and race and gender neutral.	Prosecution stated on Hispanic juror had previously served on a criminal jury that had not returned guilty verdicts and the other had concerns about getting paid if he was selected.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
139.	<i>State v. Henry</i> , 191 Ariz. 283, 955 P.2d 39 (Ct. App. 1997).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Jurors: Hispanic Juror	<i>Batson</i> challenge unsuccessful. The Court found that <i>Purkett v. Elem</i> , 514 U.S. 765 (1995) overruled <i>State v. Cruz</i> , 175 Ariz. 395, 857 P.2d 1249 (1993)'s requirement that the wholly subjective reasons for a peremptory strike also be coupled with an objective verification. As such, State's subjective reason did not need to be persuasive or plausible. It only needs to show that discriminatory intent is not inherent, and the explanation is race neutral. The Court denied the <i>Batson</i> challenge.	Prosecution alleged that Hispanic juror only made eye contact and body language towards the Court and defense counsel and defendant, not the prosecution.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
140.	<i>State v. Thompson</i> , 190 Ariz. 555, 950 P.2d 1176 (Ct. App. 1997).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Juror: Black juror	<i>Batson</i> challenge unsuccessful. Court found that the defendant failed to show a prima facie case for <i>Batson</i> challenge. Defendant showed venireman was a member of a cognizable racial group but did not show other facts sufficient to raise inference that prosecutor used a peremptory strike to exclude a juror solely on account of race.	Opinion did not state the prosecution's reason for the challenge.
141.	<i>State v. Harris</i> , 184 Ariz. 617, 911 P.2d 623 (Ct. App. 1995).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Jurors: Two Hispanic Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual. Court also noted that other Hispanic jurors were empaneled.	Stated reasons: (i) one juror could not identify clearly what county he lived in; (ii) other juror didn't answer a lot of questions, thereby giving the least information.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
142.	<i>State v. Murray</i> , 184 Ariz. 9, 906 P.2d 542 (Ct. App. 1995).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Jurors: Two Hispanic Jurors	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Stated reasons: (i) Juror 1 struck because prosecutor's office had done a criminal investigation of two of her family members and was worried that created potential bias against state; (ii) another juror was struck because prosecution had met him in a prior social setting, and found him to be "too nice" and "indecisive."
143.	<i>State v. Williams</i> , 182 Ariz. 548, 898 P.2d 497 (Ct. App. 1995).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Jurors: Two Native American Jurors	<i>Batson</i> challenge unsuccessful. Court found the prosecution's reasons were facially race neutral and case related, including that one of the reasons for Juror 2's exclusion was applied to other venirepersons.	Prosecution struck Juror 1 for being a single, having a child and possibly never having been married. Prosecution believed this made it likely that her moral values would diminish the seriousness of the charges against the defendant. Prosecution struck Juror 2 because he knew six other veniremen and might be overly influenced by them.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
144.	<i>State v. Johnson</i> , 183 Ariz. 623, 905 P.2d 1002 (Ct. App. 1995).	State of Arizona (P)	Batson Challenge made by: Unknown race male Defendant Challenged Jurors: Unknown Minority	Defendant alleged struck juror was black or part-black, but record indicated judge and prosecution did not perceive the juror to be either. Court denied <i>Batson</i> challenge because defendant failed to show that prosecution knew or believed juror was non-Caucasian and the final jury make-up included minority individuals.	Not specified.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
145.	<i>State v. Sanderson</i> , 182 Ariz. 534, 898 P.2d 483 (Ct. App. 1995).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Jurors: Four Native American jurors and One Hispanic Juror; also a total of 6 strikes challenged based on gender	Court denied the <i>Batson</i> challenge, finding that age, marital status, employment and consumption of alcohol were race-neutral grounds. Court also rejected a <i>Batson</i> challenge based on gender.	Prosecution struck Juror 1 because he was elderly, single, and consumed alcohol; Juror 2, because he was single, unemployed and consumed alcohol; Juror 3, because he went to school with defendant's attorney; Juror 4 because he was single, older, and taught school of on the reservation; Juror 5, because he was single, consumed alcohol, and had friends with alcohol problems; and Juror 6 because he consumed alcohol, had a friend with an alcohol problem, and had expressed reluctance to sit as a juror. Prosecution said he was concerned juror would be biased towards a defendant that appeared to be an older person with an alcohol problem. He also expressed concerns that single persons would struggle to consider a case involving a child.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
146.	<i>State v. Cruz</i> , 175 Ariz. 395, 857 P.2d 1249 (S. Ct. 1993) (overruled by <i>State v. Henry</i> , 191 Ariz. 283, 955 P.2d 39 (Ct. App. 1997)).	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Jurors: Two Hispanic Jurors	<i>Batson</i> challenge successful. Court found that prosecution's observations of one Hispanic juror were completely subjective and unsupported by the record. On that alone and without addressing issues regarding second juror, Court ruled there had been a <i>Batson</i> violation and remanded the matter for a new trial.	Prosecution struck Juror 1 because he believed she was weak, had poor contact with the State attorney, and believed she would be led. He struck Juror 2 because he was 18-years old and the juror stated he was worried he'd lose his job if he served on the jury. This Court noted concerns regarding <i>Batson</i> ; "Obviously, if we hold that a party's assertion of a wholly subjective impression of a juror's perceived qualities, without more, overcomes prima facie showing of discrimination, <i>Batson</i> could easily and quickly become a dead letter. We do not believe the United States Supreme Court issued the landmark <i>Batson</i> opinion without intending that state courts vigorously protect it. Yet, application of <i>Batson</i> when a facially neutral explanation is offered has proven to be exceptionally difficult." <i>See also</i> ("[w]e will not read <i>Batson</i> to permit preemptory strikes of minorities by any party based solely on an unverified subjective impression, lest <i>Batson's</i> guarantee of equal protection become nothing more than empty words.")

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
147.	<i>State v. Rodarte</i> , 173 Ariz. 331, 842 P.2d 1344 (Ct. App. 1992).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Jurors: Two Hispanic Male Jurors	<i>Batson</i> challenge unsuccessful. Court found challenges relating to juror's expression of boredom, lack of contact, and appearing close to drug culture did not need to be objectively verifiable, only race neutral. Court also found that lack of employment, a job in maintenance, and lack of time in community were appropriate even when other similarly situated jurors were not struck. Court refused to consider the disparate impact on racial minorities that these reasons created in the venire process.	Prosecutor struck Juror 1 for "looking like he was a little too close to the narcotics area himself", looking bored, disgusted, unable to make eye contact, and having no ties or responsibilities, including lacking a job and family. Prosecution stated that "Agent Williams" said Juror 1 looked "like he might possibly be a dooper." Prosecution struck Juror 2 for looking "awfully close to the drug culture himself", having no responsibilities other than a job as a building maintenance person. "Agent Williams" also said that Juror 2 looked close to drug culture.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
148.	<i>State v. Jordan</i> , 171 Ariz. 62, 828 P.2d 786 (Ct. App. 1992).	State of Arizona (P)	Batson Challenge made by: White Male Defendant Challenged Juror: Asian Juror	<i>Batson</i> challenge unsuccessful. Court recognized that a person of Asian descent was a member of a cognizable racial group for <i>Batson</i> purposes. However, the Court denied the <i>Batson</i> challenge, finding that Defendant had not made prima facie showing that <i>Batson</i> was violated, because one juror of Hispanic surname was on panel and there were no statements of discriminatory purpose in <i>voir dire</i> examination.	Opinion did not specify.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
149.	<i>State v. Medina</i> , 172 Ariz. 287, 836 P.2d 997 (Ct. App. 1992).	State of Arizona (P)	Batson Challenge made by: Hispanic Defendant Challenged Jurors: Four Hispanic Jurors	<i>Batson</i> challenge unsuccessful. Court deferred to lower court's finding that prosecutor's strikes were not pretextual or on the basis of ethnicity. Court also noted that defendant, victim, prosecutor, defense counsel, and judge were all Hispanic and both counsel used four of their challenges to exclude Hispanic jurors.	Opinion states generally that challenges were on basis of jurors being either schoolteachers, young people, or city employees.
150.	<i>State v. Batista</i> , No. 2 CA-CR 91-0367 1992 WL 10649 (Ct. App. Jan. 23, 1992).	State of Arizona (P)	Batson Challenge made by: Hispanic male defendant Challenged Juror: Hispanic male.	<i>Batson</i> challenge unsuccessful. Appellate court upheld trial court's determination that stated reasons were race-neutral and not pretextual.	Prosecutor responded that "[t]here were four other minorities left on the jury that were not struck," including three individuals who indicated Hispanic descent or Mexican heritage. Prosecutor also gave the venireman's age (21 years old), occupation (construction worker) and single marital status as the reasons for the strike.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
151.	<i>State v. Boston</i> , 170 Ariz. 315, 823 P.2d 1323 (Ct. App. 1991).	State of Arizona (P)	Batson Challenge made by: Unknown Race Female Defendant Challenged Juror: Female Hispanic Juror	<i>Batson</i> challenge successful. Court found <i>Batson</i> required the striking party to give a race-neutral reason and the reason must be related to the instant case. Court found that prosecution failed to explain why the instant case required a higher than ninth grade education.	Prosecution struck Juror for having only a ninth-grade education.
152.	<i>State v. Hernandez</i> , 170 Ariz. 301, 823 P.2d 1309 (Ct. App. 1991).	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Juror: Female Hispanic juror	<i>Batson</i> challenge unsuccessful. Appellate court found that excluding a juror for employment reasons, perceived sympathy to a defendant, concerns about juror's fatigue, and "attitude" to be proper and neutral.	Prosecution struck juror for: (1) an unstable employment history because she'd been employed only six months during nine years living in county; (2) an overly-enthusiastic response during voir dire; (3) a concern that she might be unduly sympathetic to defendant because of her age of 41, her lack of children, the defendant's youthful appearance, and her secondary employment as a massage therapist; and (4) concern that her two jobs would have her working too much for her to be an alert and effective juror.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
153.	<i>State v. Jackson</i> , 170 Ariz. 89, 821 P.2d 1374 (Ct. App. 1991).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Juror: Black Male Juror	<i>Batson</i> challenge unsuccessful. Court found that the perceived philosophical attitude of a juror was an acceptable racially neutral reason.	Prosecutor struck juror for wearing a ponytail, because that indicated to the prosecutor that the person tended towards “liberalism and doing his own thing.”
154.	<i>State v. Reyes</i> , 163 Ariz. 488, 788 P.2d 1239 (Ct. App. 1989).	State of Arizona (P)	Batson Challenge made by: Hispanic Male Defendant Challenged Jurors: One Black Juror and Two Hispanic Jurors	<i>Batson</i> challenge unsuccessful. In its opinion, the Court stated broadly that prosecution’s reasons to be racially neutral, noting that objections to Hispanic female juror were intangible but objectively verifiable reasons.	Prosecution struck Black juror for his and his family’s criminal involvement, some not readily disclosed in voir dire. He also struck Hispanic female for appearing overwhelmed and believing she appeared sympathetic and was pregnant, making it difficult for her to find someone guilty. He also struck Hispanic male for having family who spent time in prison, his age and appearance (poor dress), and his employment as a grocery clerk.
155.	<i>State v. Bailey</i> , 160 Ariz. 277, 772 P.2d 1130 (1989).	State of Arizona (P)	Batson Challenge made by: Unknown race Male Defendant Challenged Jurors: Black Juror	<i>Batson</i> challenge unsuccessful. Court found the prior conviction and juror’s request to be excused as race-neutral reasons.	Prosecution struck the juror for prior conviction, prior indictment, and for requesting to be excused for job purposes.

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
156.	<i>State v. Blackhoop</i> , 158 Ariz. 472, 763 P.2d 536 (Ct. App. 1988).	State of Arizona (P)	Batson Challenge made by: Native American Male Defendant Challenged Juror: Black Juror	Court denied the <i>Batson</i> challenge, finding that the proffered reason for the strike was racially neutral and did not need to raise to the level of justification required to exercise a challenge for cause.	Prosecution struck juror for not understanding the concept of reasonable doubt.
157.	<i>State v. Jackson</i> , 157 Ariz. 589, 760 P.2d 589 (Ct. App. 1988).	State of Arizona (P)	Batson Challenge made by: Unknown race Male Defendant Challenged Jurors: Two Black Jurors	<i>Batson</i> challenge unsuccessful. Appellate court found that the reasons provided were race-neutral and deferred to trial court's observations of demeanor and its determination that the explanations provided were race-neutral, which turns on "an evaluation of credibility."	Stated reasons: (i) one juror was too young, seemed distracted, and the prosecutor did not think she was "particularly bright"; and (ii) one of the jurors was elderly, seemed distracted, and the prosecutor did not think she was "particularly bright."

	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
158.	<i>State v. Tubbs</i> , 155 Ariz. 533, 747 P.2d 1232 (Ct. App. 1987).	State of Arizona (P)	Batson Challenge made by: Defendant Challenged Jurors: Black Male Juror	Court denied the <i>Batson</i> challenge, finding reasons were racially neutral and noting that prosecution also struck a white juror for his eye contact.	Prosecution struck only black juror because he didn't like his eye contact and thought he worked with the defendant for the City of Phoenix Sanitation Department. "Courts have had a difficult time determining whether the reasons given by the prosecutor are the true reasons or fictitious reasons given for the purpose of masking discrimination."
159.	<i>State v. Castillo</i> , 156 Ariz. 323, 751 P.2d 983 (Ct. App. 1987).	State of Arizona (P)	Batson Challenge made by: Unknown Race Male Defendant Challenged Jurors: Four Hispanic Jurors	Court denied the <i>Batson</i> challenge, finding the age, known attitudes, and attitudes of jurors to be race neutral and proper reasons to exercise a peremptory challenge.	Prosecutor struck Juror 1 for her young age; Juror 2 for her young age and participation in a jury that returned a verdict of not guilty; Juror 3, for being a mother-in-law of a friend of the officers and having a predilection against the state; and Juror 4 for her appearing "hesitant."

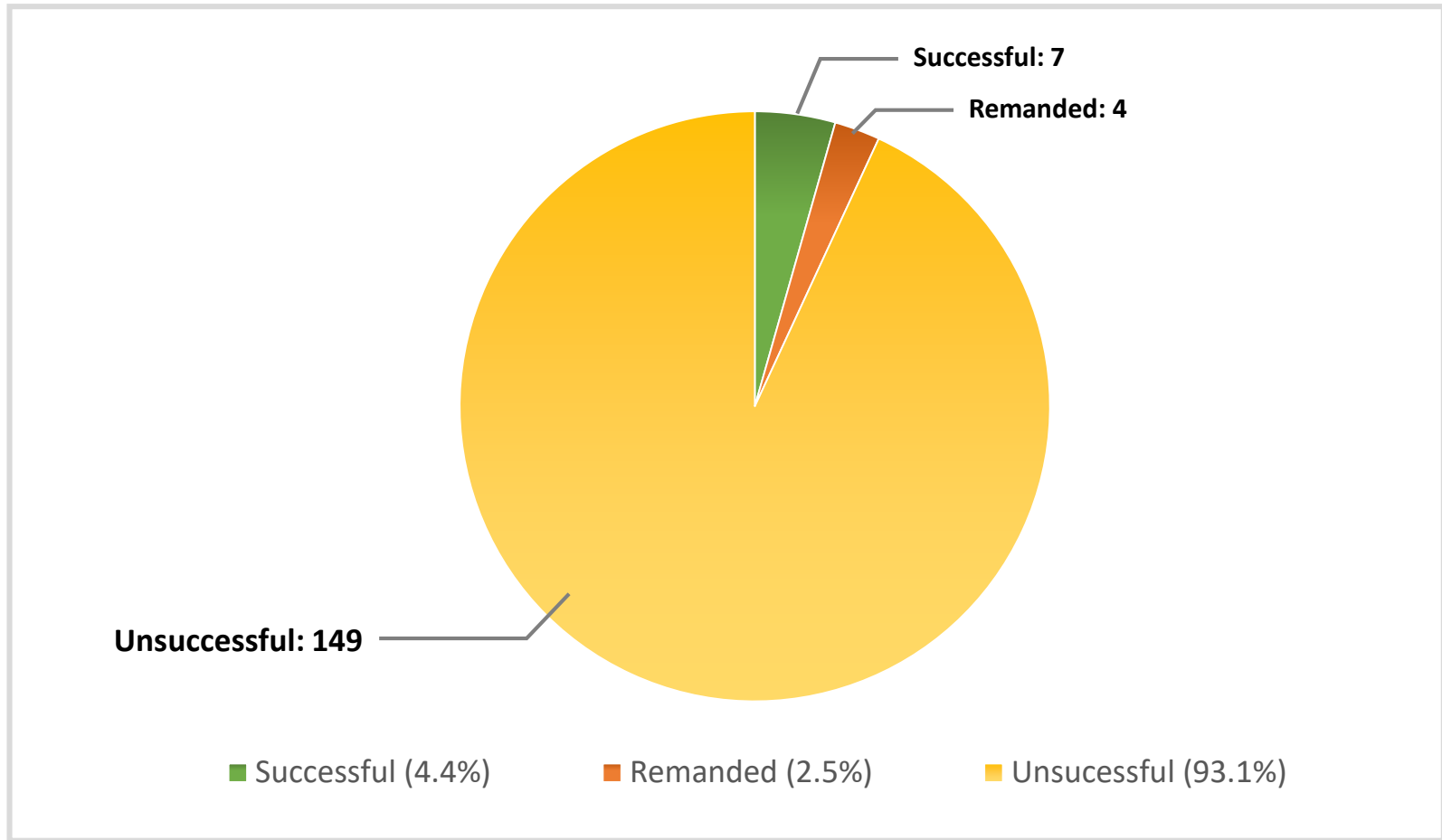
	Case Name	Party Exercising Strike (P or D)	Protected Status of Defendant and Challenged Juror	Outcome on Appeal	Basis of Challenge
160.	<i>State v. Scholl</i> 154 Ariz. 426, 743 P.2d 406 (Ct. App. 1987).	State of Arizona (P)	Batson Challenge made by: Unknown Race/Sex Defendant Challenged Juror: Black Juror	Court found that <i>Batson</i> applies where non-use of peremptory strikes results in exclusion of juror in a protected group. However, Court denied the <i>Batson</i> challenge, finding the prosecution's reasons to be racially neutral.	Prosecution refused to exercise its last strike on white juror so that only black juror could be empaneled. Prosecution stated it was his practice not to use all his challenges. He added that he had no reason strike the black juror and thus had not used his peremptory challenge to do that.

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Appendix E:

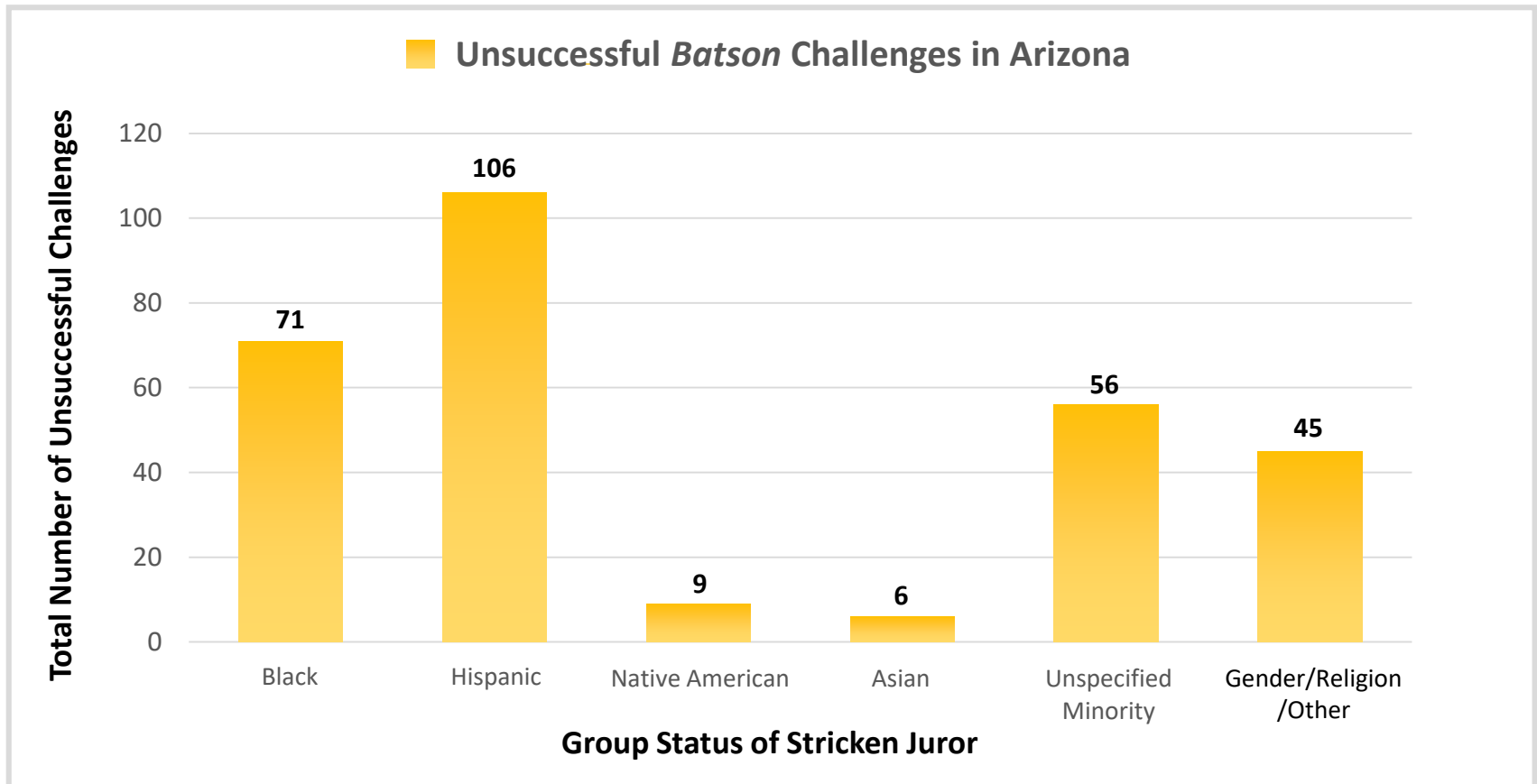
Charts Compiling Data from Arizona Appellate Opinions and Memorandum Decisions on *Batson* Challenge Outcomes

Batson Challenges: Arizona Appellate Cases*



* This chart reflects all Arizona appellate opinions and memorandum decisions that have decided *Batson* challenges on the merits since 1987, when *Batson v. Kentucky* was first applied by Arizona courts. The data does not include *Batson* challenges at the trial court level that were not appealed. Source: Appendix D, Summary of Arizona Appellate Opinions and Memorandum Decisions Addressing *Batson* challenges.

Unsuccessful *Batson* Challenges by Minority or Other Group Status *



* This chart compiles unsuccessful *Batson* challenges categorized by the group status of the challenged juror(s). Where the case involved strikes of multiple minority jurors of different races, each strike is reflected in the appropriate bar of the graph. Where a strike was challenged on multiple grounds (such as, e.g., race and religion), each ground is reflected in the totals. For that reason, the total number of *Batson* challenges depicted in this chart exceeds the total number of cases in Appendix D. The bar titled "Unspecified Minority" references race-based *Batson* challenges where the opinion does not specify the race of the challenged juror. Source: Appendix D, Summary of Arizona Appellate Opinions and Memorandum Decisions Addressing *Batson* challenges.